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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 26

SULLIVAN, CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, PETITIONER,

vs.

OTTO BEHIMER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 31, 1958
CERTIORARI GRANTED OCTOBER 12, 1959

SUPREME COURT OF THE UNITED STATES

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IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. .....

OTTO BEHIMER and JOHN A. ROBERTS, Petitioners,

vs.

THE HONORABLE PHILIP L. SULLIVAN, Chief Judge of the United States District Court for the Northern District of Illinois, Respondent.

PETITION FOR A WRIT OF MANDAMUS—Filed June 12, 1958

To the Honorable Judges of the United States Court of Appeals for the Seventh Circuit:

Your petitioners, Otto Behimer and John A. Roberts respectfully state and show to the Court:

1. The petitioners are residents and citizens of the State of Illinois and State of New York, respectively.

2. The respondent is the Chief Judge of the District Court of the United States for the Northern District of Illinois.

3. On the 12th day of February, 1958, the petitioners filed their complaint in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, Civil Action, 58 C 238. The U. S. Marshall subsequently served the complaint upon the defendants, Standard Oil Company and Standard Oil Foun-
[fol. B] dation, Inc. On March 10, 1958, the defendants filed their appearances by their attorneys and each defendant filed its "Answer and Motions to Dismiss".

4. On March 11, 1958, the defendants filed a joint motion for transfer of the suit to the United States District Court for the District of Utah, Central Division.

5. Pursuant to order of Court, the defendants, on March 27, 1958 filed the affidavit of Grant A. Brown in support of the motion for transfer together with their brief.

6. On April 24, 1958, the petitioners filed the affidavit of Warren E. King in opposition to the motion for transfer together with their brief.

7. On May 2, 1958, the defendants filed their reply brief in support of the motion for transfer.

8. On May 28, 1958, without having heard oral argument and without a written opinion, the respondent ordered the cause continued to June 6, 1958 for entry of a draft order pursuant to the respondent's oral ruling transferring the cause to the U. S. District Court for the District of Utah, Central Division.

9. Copies of all of the pleadings, affidavits and briefs submitted to the District Court, together with a copy of the order of transfer entered on June, 1958 are hereto attached and form a part of this petition, as Exhibit "A". An Index to Exhibit A immediately follows this petition.

10. The defendants in said action are corporations organized under the laws of the State of Indiana. The amount [fol. C] in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00. The District Court of the United States for the Northern District of Illinois, Eastern Division, has jurisdiction in the action pending in that Court.

11. Section 1404(a) of Title 28, U. S. Code, under which the respondent ordered the transfer of such action, provides that for the convenience of parties and witnesses and in the interests of justice, a judge of a district court may transfer any civil action to any other district "where it might have been brought".

12. Section 1391, 28 U. S. Code, provides that a civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the jurisdictional district where all plaintiffs or all defendants reside.

13. Both of the defendants are Indiana corporations and neither defendant is, or ever was, qualified to do business or resided in the State of Utah, within the jurisdiction of the transferee court, neither defendant maintains or ever maintained offices in the State of Utah; the petitioners could not have brought their suit against the defendants in the District Court of the United States for the District of Utah because such defendants did not reside in Utah or in that district.

14. Your petitioners further show to this Court and urge in support of their Petition for a Writ of Mandamus:

A. The respondent does not have the power, within the meaning of Section 1404(a) of Title 28, U. S. Code to transfer this cause to the District Court for the District of Utah for the reason that the transferee district was not a district "where it might have been [fol. D] brought".

B. If the respondent does have such power and the matter lies within his discretion, the respondent abused his discretion by allowing the motion to transfer prematurely, that is to say, before the motions to dismiss of the defendants had been determined.

C. The affidavit submitted by defendants does not disclose facts which would warrant the transfer or which sustain the burden of proof necessary to overcome plaintiffs' choice of forum. The granting of the motion to transfer constituted an abuse of discretion on the part of the respondent.

15. This Court in its very recent decision in *General Casualty Co.* v. *Grubb*, 253 F. 2d 51 has accepted the view that Section 1404(a) includes consent venue as well as statutory venue. Petition for Certiorari in the United States Supreme Court by the petitioner in that cause is now pending, No. 1024.

16. The order entered by the respondent transferring the action to the District Court of the United States for the District of Utah, Central Division is not an appealable order under Section 1291 of Title 28, U. S. Code. The peti-

tioners have no remedy except by a writ of mandamus to compel the respondent to retain jurisdiction in the action and to award whatever relief the court may determine the petitioners to be entitled to.

17. The question as to whether the words "where it might have been brought" in Section 1404(a) contemplates only [fol. E] venue permitted under Section 1391, or whether those words include consent venue has never been decided by the United States Supreme Court. Conflicting views are expressed in the opinions of the various districts and circuits, and in dissenting opinions. Petitioners suggest that notwithstanding Rule 19 (c) of this Court, if the issuance of the writ of mandamus depends on the view of this court as expressed in *General American Casualty Co.* v. *Grubb*, supra, that this court withhold its decision herein until final determination of the Petition for Writ of Certiorari by the United States Supreme Court. Petitioners urge, however, that the writ of mandamus should be granted for the reasons set forth in Paragraphs 14 B and 14 C, above.

18. This court has jurisdiction to issue a writ of mandamus under the decisions in *Chicago R. I. & P. R. Co.* v. *Igoe*, 220 F. 2d 299 (C.A. 7, 1955), *LaBuy* v. *Howes Leather Co.*, 352 U. S. 249, 1 L. Ed. (2d) 290, and *General Casualty Co.* v. *Grubb*, 253 F. 2d 51 (C.A. 7, 1958).

Wherefore, your petitioners, Otto Behimer and John A. Roberts pray for a writ of mandamus to issue out of this Honorable Court directed to the Honorable Philip L. Sullivan, Chief Judge of the District Court of the United States for the Northern District of Illinois, to compel the district judge to vacate an order transferring the action to the United States District Court for the Northern District of Utah and to retain jurisdiction of such action for the purpose of adjudicating the issues raised by the Complaint of your petitioner.

Otto Behimer and John A. Roberts, By Warren E. King, Their attorney.

Attorney for Petitioners, Warren E. King, 228 N. La Salle St., Chicago, Illinois.

[fol. F] *Duly sworn to by Otto Behimer, jurat omitted in printing.*

Exhibit "A" to Petition

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

General No. 58C 238

OTTO BEHIMER and JOHN A. ROBERTS,

Plaintiffs,

vs.

STANDARD OIL COMPANY, an Indiana corporation and STANDARD OIL FOUNDATION, INC., an Indiana corporation,

Defendants.

COMPLAINT—Filed February 12, 1958

The Plaintiffs, Otto Behimer and John A. Roberts, by Warren E. King and Jerome M. Brooks, their attorneys, allege:

1. The Plaintiffs at all times herein mentioned were and now are residents and citizens of the State of Illinois and State of New York, respectively, and were at all times herein referred to, and are the registered and actual owners of 900 shares and 1,000 shares respectively, of the common stock of Utah Oil Refining Co., a corporation organized under the laws of the State of Utah.

2. The Defendants, Standard Oil Co., and Standard Oil Foundation, Inc. are corporations organized and existing under the laws of the State of Indiana.

3. This action is based upon diversity of citizenship and the matter in controversy, exclusive of interests and costs, exceeds the sum or value of $3,000.00.

4. On June 11, 1956, there were issued and outstanding 1,391,116 shares of common stock of Utah Oil Refining Co. [fol. 2] hereinafter called UTOCO) of which 1,008,640 were

owned by Standard Oil Co. and 71,380 were owned by Standard Oil Foundation, Inc.

5. 140,519 shares of the common stock of UTOCO were owned by the following stockholders, (hereinafter referred to as the Controlled Stockholders), some of whom were the officers and directors of UTOCO.

Bennett Association	30,000
David W. Bennett	100
Frances G. Bennett	400
H. H. Bennett	2,000
Richard S. Bennett	3,500
Robert F. Bennett	100
Rosetta W. Bennett	200
Wallace F. Bennett	2,000
Wallace G. Bennett	15
J. D. Campbell	1,000
May H. Doscher	475
John L. Firmage	250
Rosemary B. Fletcher	100
Lois M. Greenwood	897
M. J. Greenwood	1,421
M[illegible]. Wattie Harris	917
W[illegible]iam H. Harris	10,000
Phyllis G. Harvey	930
Ruth Harris Hite	777
Edward S. Holt	4,540
Reed E. Holt	500
Francis B. Jeppson	100
Elise F. Musser	1,407
[fol. 3]	
Samuel C. Powell	750
Mabel W. Reynolds	100
Stephen L. Richards	584
Katherine E. Sage	4,450
Hilda Sandmann	400
Aurelia H. Schettler, Trustee under Declaration of Trust dated June 24, 1955, with Catherine A. Lowe Hampton	135
Dan B. Shields	1,200
George Smith	400

Mary B. Smith	1,500
Genevieve Stafford	1,692
Harold B. Stafford	1,992
Tracy-Collins Trust Company	4,331
Tracy-Collins Trust Co., Guardian of the Estate of Sabina Degnan	150
Tracy-Collins Trust Co., Guardian of the Estate of A. J. Duquesne	667
Walker Bank & Trust Co., Trustee under the Will of James J. Burke, Deceased	250
Walker Bank & Trust Co., Trustee under deed of Trust dated November 1, 1948 with Charles B. Petty and Maggie C. Petty	100
Walker Bank & Trust Co., Executor of the Estate of Margaret Burke Raleigh, Deceased	549
Walker Bank & Trust Co., Executor of the Estate of Emma B. Selbach, Deceased	800
Walker Bank & Trust Co., Trustee under will of Ernest A. Tripp, Deceased	425
A. C. Wallace	3,856
Glen Wallace	300
Henry A. Wallace, Jr.	200
Ina Claire Wallace	480
[fol. 4]	
John M. Wallace	45,814
John M. Wallace, Jr.	20
M. Elen Wallace	50
William R. Wallace	2,874
William R. Wallace, Jr.	3,161
Elizabeth B. Winters	1,325
TOTAL	140,519

There remained 170,577 shares of UTOCO owned by others, including the Plaintiffs herein, referred to herein as the Minority Stockholders.

6. At all times herein referred to the officers and directors of UTOCO were under the control and domination of Standard Oil Company and Standard Oil Foundation, Inc. and it became and was the duty of the said Defendants and

the Controlled Stockholders not to use their majority control of UTOCO in violation or derogation of the rights of the Plaintiffs or other minority stockholders not mentioned herein. The Plaintiffs bring this action in a representative capacity on behalf of themselves and the other minority stockholders of UTOCO who are or were similarly situated to Plaintiffs, as a representative suit. All of the acts and doings of UTOCO and the Defendants, herein complained of, were the direct result of the dominance and control of the Defendants over UTOCO and its officers and directors.

7. Prior to June 11, 1956, the Defendants caused a Delaware corporation to be formed under the name of Ten West Broadway Oil Corporation, (hereinafter called TENOCO), [fol. 5] which corporation was wholly owned and controlled by Standard Oil Co. and Standard Oil Foundation, Inc. On June 11, 1956, an Agreement was entered into by and between UTOCO and TENOCO wherein TENOCO agreed to buy all of the assets and assume all the liabilities of UTOCO in exchange for 695,558 shares of Standard Oil Co. theretofore acquired by TENOCO from Standard Oil Co.; UTOCO was then to distribute its assets to its stockholders, said assets consisting solely of the 695,558 shares of Standard Oil Co. for each 2 shares of UTOCO theretofore owned by the stockholders of UTOCO and UTOCO was then to be dissolved. A copy of the Agreement dated June 11, 1956 between UTOCO and TENOCO is hereto attached, marked "Plaintiffs' Exhibit 1" and made a part hereof.

8. Afterwards UTOCO changed its name to Labra Oil Company and distributed its sole asset, the shares of Standard Oil Company which it received pursuant to the Agreement of June 11, 1956, and caused itself to be dissolved.

9. The Agreement of June 11, 1956 was part of a plan of the Defendants herein, together with the Controlled Stockholders, in violation of and contrary to their fiduciary duties and obligations as majority stockholders to the Plaintiffs and other Minority Stockholders who were or are similarly situated to the Plaintiffs:

(a) To Permit the Defendants herein to acquire 100% control of the assets of UTOCO at a price below the fair market value thereof.

(b) To compel Plaintiffs and other Minority Stockholders involuntarily to become shareholders of Standard Oil Company.

[fol. 6] (c) To deprive Plaintiffs and other Minority Stockholders of their proportionate share in the valuable growing business of UTOCO.

10. In furtherance of the plan of the Defendants to acquire 100% of the assets of UTOCO and compel Plaintiffs and other Minority Stockholders involuntarily to become shareholders of Standard Oil Co. and deprive them of their proportionate share of the true value of UTOCO, the Defendants and the Controlled Stockholders through their control and domination of the officers and directors of UTOCO did one or more of the following acts:

(a) The common stock of UTOCO is not listed on any Exchange, but is traded on the over-the-counter market and the Defendants and the Controlled Stockholders acted in concert to depress the price of UTOCO in the over-the-counter market.

(b) In order to depress the over-the-counter price of UTOCO and temporarily depress the earnings of UTOCO, UTOCO acquired and retained large cash reserves, government bonds and securities equal to 21.3% of the total assets of UTOCO; other than interest received on the securities, these assets produced no revenue for UTOCO.

(c) The directors and officers failed to take advantage of the oil reserves of UTOCO, or to expand the business utilizing the excess cash and securities so that on Dec. 31, 1955 the reserves for depreciation, amortization and depletion of UTOCO's fixed assets were approximately 44% of the cost of such assets.

(d) UTOCO failed to declare as dividends a reasonable [fol. 7] portion of the annual earnings in order further to depress the over-the-counter price of UTOCO stock.

11. The actual value of UTOCO stock on June 12, 1956 based on the value of the underlying assets, earning power of said assets and goodwill, was in excess of $60.00 per share. No appraisal or independent valuation was made by UTOCO or by the Defendants of the value of the underlying assets of UTOCO or of the value of the shares UTOCO based on the value of the underlying assets or the earning power of said assets or goodwill of UTOCO. UTOCO owned approximately 700 retail gasoline stations, storage facilities, trucks and equipment throughout the Northwest section of the United States and no consideration was given to the true value, earning power or goodwill (other than book value) in determining the exchange ration of UTOCO and Standard Oil stock. The market price of Standard Oil Company stock on June 12, 1956 was $59.83; the market value of one-half share of said stock was $29.92. The Plaintiffs and other Minority Stockholders who were or are similarly situated to Plaintiffs suffered damages to the extent of $30.08 per share for the 170,577 shares owned by Plaintiffs and other Minority Stockholders of UTOCO amounting to $5,130,956.16.

12. Plaintiffs believe other compensation, the exact nature of which is unknown to the Plaintiffs, was given or extended to the Controlled Stockholders to secure their co-operation and acquiescence in the plan to deprive Plaintiffs and other Minority Stockholders to their rights in the premises.

13. No demand has been made upon the officers or directors of UTOCO for the relief prayed for herein or for them [fol. 8] to bring this suit on behalf of UTOCO or its shareholders; such demand would be futile, as the officers and directors are antagonistic to the interests of these Plaintiffs and the officers and directors are under the control and domination of the Defendants.

WHEREFORE, the Plaintiffs pray the Court:

(a) To require the Defendants fully to answer the Interrogatories hereto attached.

(b) To require the Defendants to account for the damages suffered by the Plaintiffs and other Minority Stockholders who were or are similarly situated to Plaintiffs.

(c) To enter Judgement against the Defendants, in favor of Plaintiffs and other Minority Stockholders who are or were similarly situated to Plaintiffs for the losses sustained by each shareholder being deprived of the fair and reasonable value of their respective holdings of UTOCO stock.

(d) For such other relief as the Court may find just and equitable, including allowance to the Plaintiffs of their costs, disbursements, and counsel fees,

Otto Behimer and John A. Roberts

By: .....

one of their attorneys

Attorneys for Plaintiffs:

Warren E. King
Jerome M. Brooks
228 N. LaSalle Street
Chicago 1, Illinois
Fin 6-4222

[fol. 9]

State of Illinois)
County of Cook) SS.

AFFIDAVIT OF OTTO BEHIMER

Otto Behimer being first duly sworn upon his oath deposes and says:

1. He is one of the Plaintiffs in the above Complaint.
2. He is now a shareholder and was a shareholder at the time of the transactions complained of in said Complaint.

3. This action is not a collusive one to confer on this Court jurisdiction of any action of which it would not otherwise have jurisdiction.

.....

Subscribed and sworn
to before me this
..... day of January, 1958

.....
Notary Public

[fol. 10]
State of New York)
County of .....) SS.

AFFIDAVIT OF JOHN A. ROBERTS

John A. Roberts being first duly sworn upon his oath deposes and says:

1. He is one of the Plaintiffs in the above Complaint.
2. He is now a share holder and was a shareholder at the time of the transactions complained of in said Complaint.
3. This action is not a collusive one to confer on this Court jurisdiction of any action of which it would not otherwise have jurisdiction.

.....

Subscribed and sworn
to before me this
..... day of January, 1958

.....
Notary Public

[fol. 11]

INTERROGATORIES

1. What were the dates of acquisition and price per share paid for UTOCO stock acquired by each Defendant? From whom were such shares obtained?

2. How much crude oil, natural gas liquids, and natural gas was obtained by Standard Oil Co. and affiliates from UTOCO and vice versa in the period from Jan. 1, 1950 to Dec. 31, 1955? State dates of delivery, price per unit, and method of determining prices of each product from time to time to time.

3. Were or are any of the controlled stockholders listed in Paragraph 5 of the Complaint now employed by the Defendants or either of them or by TEXOCO or its successor by change of name as officer, director or otherwise? If so, give date of employment, capacity, and salary including bonus and pension arrangements, if any.

4. Was there an appraisal of the property owned by UTOCO between July 1, 1955 and June 6, 1956? If so, by whom and when was such appraisal made? Provide copy of such appraisal. If no appraisal was made, subsequent to July 1, 1955, when was the last appraisal made and by whom? Provide copy of such appraisal.

5. When and by whom was the estimate made, as of Dec. 31, 1955 of the reserves of the crude oil and the natural gas liquid of UTOCO? Provide copy of surveys and findings upon which such estimate was made.

[fol. 12] 6. List and describe all properties and assets owned by UTOCO and its subsidiaries on June 12, 1956, including, but not limited to, retail service stations, trucks, storage facilities, and oil and gas leases. State terms of such leases, dates and costs of purchase of such properties and assets, cost of improvements, betterments, drillings, and betterments, and depreciation and depletion taken on each property.

7. Were any of the properties or assets mentioned in Paragraph 6 disposed of after June 12, 1956? If so, state date of disposition, to whom disposed of, price and terms of such disposition.

8. What exploration and drilling expenditures were made by UTOCO between Jan. 1, 1950 and Dec. 31, 1955? State the nature and results of such exploration and drilling expenditures.

9. Were any meetings, conferences, or correspondence had between the Standard Oil Co. and UTOCO their intermediaries and brokers between Jan. 1, 1950 and Dec. 31, 1955 concerning any of the following matters:

(a) The dividend policy of UTOCO, the declaration of dividends and amounts thereof.

(b) The expenditures to be made by UTOCO for exploration, drilling or acquisition of new oil or gas fields.

(c) The determination of the ratio of 1 share of UTOCO for ½ share of Standard common stock as the alleged fair exchange value.

If so, provide minutes of such meetings or conferences and copies of correspondence.

[fol. 13] 10. Was any additional consideration given to the controlled stockholders listed in Paragraph 5 of the Complaint other than the same exchange ratio for their respective holdings of common stock of UTOCO by way of additional compensation, bonus, employment agreements or arrangements, or otherwise? If so, state the nature of such compensation paid to or arranged with each of the controlled stockholders.

11. State what compensation, if any, was paid to the intermediaries and/or brokers for arranging the purchase by Standard Oil Co. of Indiana for acquisition of the assets of UTOCO, and to whom and when such compensation was paid.

[fol. 14]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action No. 58 C 238.

OTTO BEHIMER and JOHN A. ROBERTS,

Plaintiffs,

vs.

STANDARD OIL COMPANY, an Indiana corporation and STANDARD OIL FOUNDATION, INC., an Indiana charitable corporation,

Defendants.

ANSWER AND MOTIONS TO DISMISS OF STANDARD OIL COMPANY—filed March 10, 1958

Now comes STANDARD OIL COMPANY, an Indiana corporation, by Weymouth Kirkland, Howard Ellis, John C. Butler, and Louis J. Keating, its attorneys, and for answer to the Complaint of Otto Behimer and John A. Roberts, says:

1. Answering paragraph 1 of the Complaint:

A. Defendant admits that Otto Behimer became the holder of record of the following shares of the common stock of Utah Oil Refining Company, a corporation organized under the laws of the State of Utah (hereinafter called Utoco), and that such shares were acquired by Otto Behimer, according to Utoco's stock register, on the following dates:

Date of Acquisition	*Number of Shares*
6-9-54	350
6-18-54	200
7-2-54	50
7-9-54	100
7-20-54	100
11-26-54	100;

[fol. 15] and that the address of Otto Behimer, as shown on Utoco's stock register, was care of M. M. Birnbaum, 39 South La Salle St., Room 520, Chicago, Illinois.

B. Defendant admits that John A. Roberts became the holder of record of the following shares of the common stock of Utoco, and that such shares were acquired by John A. Roberts, according to Utoco's stock register, on the following dates:

Date of Acquisition	*Number of Shares*
5-24-56	150
5-24-56	50
5-24-56	200
5-24-56	200
5-24-56	100
5-24-56	200
5-24-56	100;

and that the address of John A. Roberts, as shown on Utoco's stock register, was 17 East 70th St., New York, N. Y.

C. Defendant denies that Otto Behimer and John A. Roberts are presently stockholders of Utoco for the reason that, pursuant to the provisions of Title 78, Chapter 42 of the Utah Code Annotated, Utoco (which by change of name became known as Lubra Oil Company) was dissolved by decree dated September 25, 1956 entered by the District Court of the State of Utah, Third Judicial District, County of Salt Lake. A copy of such decree of dissolution is attached hereto, marked Exhibit A, and made a part hereof. Such dissolution proceedings, as the decree [fol. 16] recites, were approved by Utoco stockholders owning, in the aggregate, 96.1% of the issued and outstanding stock of the corporation, at a duly called stockholders' meeting held at the offices of the corporation in Salt Lake City, Utah, on July 11, 1956.

D. Except as herein admitted or denied, defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph i of the Complaint, and therefore denies the same.

2. Answering paragraph 2 of the Complaint, defendant admits that it is a corporation organized and existing under the laws of the State of Indiana and that Standard Oil Foundation, Inc., is a charitable corporation organized and existing under the laws of the State of Indiana pursuant to the provisions The Indiana General Not for Profit Corporation Act, Title 25, Chapter 3, Burns Indiana Statutes Annotated.

3. Answering paragraph 3 of the Complaint, defendant admits that there is diversity of citizenship between plaintiffs and defendants and that the amount in controversy between Otto Behimer and defendants, and between John A. Roberts and defendants, is claimed by each to exceed the sum or value of $3000.00.

4. Answering paragraph 4 of the Complaint, defendant admits the allegations thereof and states that there was no other stock of Utoco, other than the 1,391,116 shares of its common stock, which was authorized, issued or outstanding.

[fol. 17] 5. Answering paragraph 5 of the Complaint, defendant admits that 140,519 shares of the common stock of Utoco were held by the stockholders named, and in the amounts listed, in said paragraph 5. Defendant further admits (1) that four of such stockholders, of the fifty-two named, were, on July 11, 1956, directors of Utoco, being Wallace F. Bennett, William H. Harris, Edward S. Holt, and Stephen L. Richards, and (2) that there remained 170,577 shares of Utoco which were held, according to Utoco's stock register, by 920 stockholders, including plaintiffs, as of July 11, 1956. Defendant takes issue with the correctness and propriety of plaintiffs' appellation of the said fifty-two stockholders as "Controlled Stockholders", and defendant specifically denies that such stockholders were in any degree controlled other than by the dictates of their own individual business judgments. Defendant further denies that any of the said fifty-two stockholders were officers of Utoco on July 11, 1956.

6. Answering paragraph 6 of the Complaint, defendant denies the allegations thereof.

7. Answering paragraph 7 of the Complaint, defendant admits that the copy of the agreement, attached to the Complaint and marked Plaintiff's Exhibit 1, is a true and correct copy of the agreement entered into, as of June 11, 1956, between Utoco and Ten West Broadway Oil Corporation, a Delaware corporation (hereinafter called Tenoco). Except as thus admitted, defendant denies the allegations of paragraph 7 of the Complaint, and states the facts to be:

[fol. 18] A. On June 12, 1956, notice was given to the Utoco stockholders of a special stockholders' meeting to be held on July 11, 1956 in Salt Lake City, Utah, to consider and vote for or against:

(1) The approval of the agreement of June 11, 1956 between Utoco and Tenoco, and the confirmation and approval of the transfer and sale of the assets of Utoco to Tenoco pursuant to the agreement;

(2) The change of name of Utoco to Lubra Oil Company or some other name dissimilar to "Utah Oil Refining Company"; and

(3) The liquidation and distribution of the assets of Utoco and the winding up and dissolution of Utoco.

A copy of the notice of the said special meeting, together with a proxy statement, was sent to all stockholders of record of Utoco at the close of business on June 12, 1956. Such notice and proxy statement are attached hereto, marked Exhibit B, and made a part hereof.

B. Although not required by the General Rules and Regulations of the Securities and Exchange Commission (since Utoco was not a company whose stock was listed on a national exchange), the proxy statement was prepared with respect to information required in a proxy statement used by a listed company.

C. Attached as Appendix I to the said proxy statement is a copy of the agreement of June 11, 1956 between Utoco [fol. 19] and Tenoco (Plaintiff's Exhibit 1), which set forth the terms of the proposed transfer and sale of Utoco's

assets to Tenoco. The terms of the said agreement and of the transfer and sale, which were among the subjects noticed for consideration by, and approval or disapproval of, the Utoco stockholders at the special meeting called for July 11, 1956, are summarized on pages 2 and 3 of the proxy statement.

D. As one of the conditions to the fulfillment of the agreement, and to the transfer and sale of the assets of Utoco to Tenoco, it was provided in the agreement (paragraph 6 thereof) that the said transfer and sale must be approved at the aforesaid stockholders meeting by the affirmative vote of defendant and of the holders of more than 50% of the outstanding stock of Utoco other than that held by defendant and Standard Oil Foundation, Inc.

E. At the special meeting of the stockholders of Utoco, held on July 11, 1956 pursuant to the aforesaid notice, there were present, by person or by proxy, the holders of 1,352,608 shares of Utoco stock, out of a total outstanding 1,391,116 shares of such stock. The results of the stockholders' votes on the subjects noticed for the meeting were as follows:

[fol. 20]

Subject	Number of Shares For	Against
The approval of the agreement of June 11, 1956 between Utoco and Tenoco, and the confirmation and approval of the transfer and sale of the assets of Utoco to Tenoco	1,336,880	15,728
The change of name to Lubra Oil Company	1,336,880	15,728
The liquidation and distribution of the assets of Utoco and the winding up and dissolution of Utoco	1,336,880	15,728

Each of the three subjects was therefore approved by the affirmative vote of the holders of more than 96.1% of the

outstanding stock of Utoco. The Utoco stockholders voting negatively on such subjects accounted for approximately 1.1%, and such stockholders who did not vote accounted for approximately 2.8%, of such outstanding stock.

F. Excluding the Utoco stock held by defendant and Standard Oil Foundation, Inc., which was voted affirmatively on the above subjects, the Utoco stockholders' action thereon were:

[fol. 21]

Subject	Number of Shares For	Against	Not Present
The approval of the agreement of June 11, 1956 between Utoco and Tenoco, and the confirmation and approval of the transfer and sale of the assets of Utoco to Tenoco	256,860	15,728	38,508
The change of name to Lubra Oil Company	256,860	15,728	38,508
The liquidation and distribution of the assets of Utoco and the winding up and dissolution of Utoco	256,860	15,728	38,508

Each of the three subjects was therefore approved by the affirmative vote of approximately 82.57% of the outstanding stock of Utoco other than that held by defendant and Standard Oil Foundation, Inc. The Utoco stockholders voting negatively on such subjects accounted for approximately 5.05%, and such stockholders who did not vote accounted for approximately 12.38%, of such outstanding stock other than that held by defendant and Standard Oil Foundation, Inc.

G. In Pursuance of the aforesaid stockholder authorization the agreement between Utoco and Tenoco of June

11, 1956 was completed and Utoco transferred and sold its assets to Tenoco and received from Tenoco in Consideration therefor 695,558 shares of the capital stock of defendant. Thereafter, by charter amendment, Tenoco changed its name to Utah Oil Refining Company and Utoco [fol. 22] changed its name to Lubra Oil Company. On July 17, 1956 and again on July 25, 1956, the stockholders of Lubra Oil Company (Utoco) were notified by letter of its president of the action taken at the special meeting of July 11, 1956, and instructed as to the manner of exchanging their shares for shares of defendant's capital stock. Copies of these two letters are attached hereto, marked Collective Exhibit C, and made a part hereof. On August 9, 1956, Lubra Oil Company (Utoco) made application for dissolution to the District Court of the State of Utah, Third Judicial District, County of Salt Lake, which application was on that day ordered filed, and hearing thereon set for September 25, 1956. The former stockholders of Utoco were notified of this application for dissolution, both by published notice and by personal mail, and such proceedings were held thereafter on such application that on September 25, 1956, a decree of dissolution (Exhibit A hereto) was entered by said Court, without intervention or protest on the part of any stockholders.

H. As of a date shortly prior to the filing of this Answer, the holders of all but 9,674 shares of the former Utoco stock (or approximately 99.31%) had surrendered such stock and received defendant's stock in exchange therefor on the approved basis of two shares of the former for one of the latter. The tabulation of such exchange (excluding the two defendants therefrom) is as follows: [fol. 23]

(1) Stockholders Who Voted Affirmatively

a. Exchange effected	256,538
b. Exchange not yet effected (5 holders)	322
Total	256,860

(2) Stockholders Who Voted Negatively	
a. Exchange effected	7,354
b. Exchange not yet effected (17 holders)	8,374
Total	15,728
(3) Stockholders Not Present	
a. Exchange effected	37,530
b. Exchange not yet effected (5 holders)	978
Total	38,508

8. Answering paragraph 8 of the Complaint, defendant admits the allegations thereof.

9. Answering paragraph 9 of the Complaint, defendant denies the allegations thereof.

10. Answering paragraph 10 of the Complaint, defendant admits that the common stock of Utoco was not listed on any exchange, but was traded on the over-the-counter market. Except as thus admitted, defendant denies the allegations of paragraph 10.

11. Answering paragraph 11 of the Complaint, defendant denies the allegations of the first, third and fifth sentences thereof. As to the allegations of the second sen- [fol. 24] tence thereof, defendant states that the factors as to the value of the underlying assets of Utoco, or of the value of the shares of Utoco based on the value of the underlying assets or the earning power of said assets or good will of Utoco, which were taken into account were those stated in the proxy statements attached to the notice of the special meeting of July 11, 1956, Exhibit B hereto. Defendant further states that the market price of its stock on July 11, 1956 was $61.00 per share.

12. Answering paragraph 12 of the Complaint, defendant denies the allegations thereof.

13. Answering paragraph 13 of the Complaint, defendant admits that no demand has been made upon the offi-

cers or directors of Utoco for the relief prayed for in the Complaint, or for them to bring this suit on behalf of Utoco or its shareholders. Except as thus admitted, defendant denies the allegations of paragraph 13, and further states the fact to be that plaintiffs did not appear at the stockholders meeting of July 11, 1956 to voice their views (except by negative proxy) or to secure from the Utoco shareholders such action as plaintiffs might have desired.

MOTIONS TO DISMISS

14. Defendant moves to dismiss this suit, insofar as it may purport to be a derivative or secondary action by shareholders pursuant to Rule 23 (b) of the Federal Rules of Civil Procedure, for the following reasons:

[fol. 25] A. The failure to join Utoco (by change of name Lubra Oil Company) as a party to this suit, such corporation being an indispensable party.

B. The failure of plaintiffs to verify their complaint under oath, as required by Rule 23 (b) of the Federal Rules of Civil Procedure.

C. The failure of plaintiffs to set forth with particularity their efforts to secure from the Utoco shareholders such action as they desire, as required by Rule 23 (b) of the Federal Rules of Civil Procedure.

D. The absence of Tenoco (by change of name Utah Oil Refining Company, a Delaware corporation) as a party to this suit, such corporation being the purchaser and transferee of the assets of Utoco.

E. The failure of plaintiffs to allege a derivative or secondary cause of action.

15. Defendant moves to dismiss this suit, insofar as it may purport to be an action pursuant to Rule 23 (a) (1) of the Federal Rules of Civil Procedure, for the following reasons:

A. The Complaint fails to allege facts showing that the plaintiffs are proper representatives of, or will adequately represent, the class on whose behalf they purport to sue and, on the contrary, they are not such representatives of the class described in the Complaint [fol. 26] so as to entitle them to maintain this action.

B. The class which plaintiffs purport to represent does not in fact exist.

C. The class which plaintiffs purport to represent, if such can be said to exist, has affirmatively authorized and approved that of which plaintiffs complain.

D. The absence of Tenoco (by change of name Utah Oil Refining Company, a Delaware corporation) as a party to this suit, such corporation being the purchaser and transferee of the assets of Utoco.

E. The character of the right which plaintiffs seek to enforce is not joint, common or secondary.

16. Defendant moves to dismiss this suit, insofar as it may purport to be an action pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure, for the following reasons:

A. The persons similarly situated to plaintiffs are not so numerous as to make it impracticable to bring them all before the Court.

B. There is no common question of law or fact affecting the several rights of plaintiffs and of persons alleged to be similarly situated to plaintiffs.

[fol. 27] C. The absence of Tenoco (by change of name Utah Oil Refining Company, a Delaware corporation) as a party to this suit, such corporation being the purchaser and transferee of the assets of Utoco.

WHEREFORE, Standard Oil Company prays judgment dismissing the Complaint.

Weymouth Kirkland

Howard Ellis

John C. Butler

Louis J. Keating

Kirkland, Fleming, Green, Martin & Ellis
130 East Randolph Drive
RAndolph 6-2929

Attorneys for defendant, Standard Oil Company

Thomas E. Sunderland
Richard J. Farrell
Of Counsel.

[fol. 28]

EXHIBIT "A" TO ANSWER

IN THE DISTRICT COURT OF THE STATE OF UTAH
Third Judicial District
IN AND FOR THE COUNTY OF SALT LAKE

In the Matter of the Voluntary Dissolution of

LUBRA OIL COMPANY, a corporation.

DECREE OF DISSOLUTION

The application of Lubra Oil Company, a corporation of the State of Utah, having come on regularly to be heard before the above entitled court on September 25, 1956, at 2:30 o'clock PM. pursuant to notice duly given according to law, and the court having received sworn testimony and docu-

mentary proof in explanation and in support of said Application for Dissolution, and the object, the court finds:

1. On July 16, 1956, the Articles of Incorporation of Utah Oil Refining Company, a Utah corporation, were amended so as to change its name to Lubra Oil Company;

2. Lubra Oil Company is a corporation of the State of Utah;

3. At a meeting of the stockholders of Utah Oil Refining Company, A Utah corporation, now called Lubra Oil Company, duly called and held at the offices of the corporation in Salt Lake City, Utah, on July 11, 1956 at 10:00 A. M., the dissolution of the corporation was resolved upon by the vote of the stockholders of the corporation owning, in the aggregate, 96.1% of the issued and outstanding stock of the corporation entitled to vote at said meeting;

4. Subsequent to said stockholders' meeting in paragraph 3 next above mentioned, the directors of said corporation at a meeting duly called and held at the offices of the corporation in Salt Lake City, Utah, on July 11, 1956 at 2:00 P. M., resolved that the corporation make application to the Third Judicial District Court of the State of Utah, and for the County of Salt Lake, for the dissolution and winding up of the corporation;

5. All claims of the State of Utah for fees, taxes, penalties, interests and costs against the corporation have been satisfied and discharged;

6. All claims and demands against the corporation have been satisfied and discharged and its debts and taxes are all paid or otherwise adequately provided for;

[fol. 29] 7. It is to the best interest of said corporation and those interested therein that the corporation be dissolved;

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Lubra Oil Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, is dissolved;

2. That Lubra Oil Company shall continue in existence for the purpose of winding up its affairs notwithstanding this Decree of Dissolution; and Lubra Oil Company and its officers shall settle and wind up its affairs and shall distribute, or cause to be distributed, by appropriate means its remaining assets, if any there be, to those entitled thereto;

3. That the stockholders of the corporation, upon receiving their respective shares of the property of the corporation, surrender, or cause to be surrendered, to the secretary of the corporation, their stock certificates for cancellation.

Dated this 25th day of September, 1956.

BY THE COURT:

/s/ STEWART M. HANSON
JUDGE

Attest: Alvin Keddington, Clerk

By John W. Avery, Deputy Clerk

(SEAL) Endorsed No. 109512 Filed SEP 25 1956

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Alvin Keddington, Clerk in and for the County of Salt Lake and Ex-Officio Clerk of the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the original DECREE OF DISSOLUTION

In the Matter of the Voluntary Dissolution

of

LUBRA OIL COMPANY, a corporation

No. 109,512

as appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 25th day of September A.D., 1956.

ALVIN KEDDINGTON Clerk

By /s/ Jacob Werly Deputy Clerk

(SEAL)

[fol. 30]

TO THE STOCKHOLDERS OF
UTAH OIL REFINING COMPANY

Which by Amendment to its Articles of Incorporation Is now Named Lubra Oil Company:

July 25, 1956

As reported to you in my letter dated July 17, 1956, the stockholders of your company, at the special meeting held on July 11, 1956, approved the transfer and sale of all the company's assets and property to Ten West Broadway Oil Corporation, a Delaware corporation, by a very substantial affirmative vote. Accordingly, on July 13, 1956, the assets and property were transferred to the Delaware corporation and your company has received in exchange therefor 695,558 shares of the Capital Stock of Standard Oil Company, an Indiana corporation. This stock now constitutes your company's sole asset and is to be distributed to the stockholders as authorized at the special stockholders' meeting.

You must surrender your Utah Oil Refining Company stock certificate(s) in order to receive distribution of the stock of Standard Oil Company to which you are entitled. As you know, this distribution will be at the rate of one share of Standard stock for each two shares of the stock of your company.

Your Utah Oil Refining Company stock certificate(s) must be sent to:

First Security Bank of Utah, N.A.
Attention: Trust Department
Main at Fourth South Street
Salt Lake City 9, Utah

There is enclosed a Letter of Transmittal which you should complete and send to the above bank along with your stock certificate(s). An envelope addressed to the bank is enclosed for your convenience. In filling out the Letter of Transmital please read carefully and observe the instructions printed on the back of the letter.

If you own an uneven number of shares of the Common Stock of Utah Oil Refining Company you will receive an interest in one-half a bearer scrip certificate. The terms of such scrip will be explained at the time of its distribution.

Distribution of the Standard Oil Company stock certificates will begin on August 8, 1956. You will receive certificates for Standard stock only upon surrender of your Utah Oil Refining Company stock certificate (s). I urge you to transmit your Utah Oil Refining Company stock cer- [fol. 31] tificate (s) for exchange as soon as possible so that you may promptly receive future dividends to which you may be entitled as a stockholder of Standard Oil Company.

As you were advised in the Proxy Statement, the Commissioner of Internal Revenue has ruled that under existing Federal Income Tax Laws no gain or loss will be recognized to stockholders of your company upon the exchange of their stock for stock of Standard Oil Company, and, further, that the basis of the Standard stock in your hands will be the same as the basis of the stock of your company exchanged therefor.

As stated in the instructions on the back of the Letter of Transmittal, the method of delivery of your Utah Oil Refining Company stock certificate(s) to the First Security Bank of Utah, N.A. is at your option and risk, but registered mail is suggested.

May I express to you appreciation of your support and your many helpful comments.

A. J. BADGER
President, Utah Oil Refining Company, Which by Amendment to its Articles of Incorporation is now named Lubra Oil Company.

(See Opposite) ☞

[fol. 32]

EXHIBIT "B" TO ANSWER
UTAH OIL REFINING COMPANY

Notice of Special Meeting of Stockholders

To Be Held July 11, 1956

To the Stockholders of
UTAH OIL REFINING COMPANY:

Notice is hereby given that a Special Meeting of Stockholders of UTAH OIL REFINING COMPANY, a Utah corporation (hereinafter called UTOCO), will be held at Room 704, 10 West Broadway, Salt Lake City, Utah, on Wednesday, July 11, 1956, at the hour of 10 o'clock A.M., Mountain Standard Time, for the following purposes:

(1) to consider and vote for or against (i) the approval of an agreement dated June 11, 1956, between UTOCO and Ten West Broadway Oil Corporation, a Delaware corporation, a copy of which agreement is annexed as Appendix I to the accompanying Proxy Statement, and (ii) the confirmation and approval of the transfer and sale of the assets of UTOCO to said Delaware corporation pursuant to said agreement;

(2) to consider and vote for or against an amendment to the Amended Articles of Incorporation of UTOCO so as to change its name to "Lubra Oil Company" or to some other name dissimilar to "Utah Oil Refining Company";

(3) to consider and vote for or against the liquidation and distribution of the assets of UTOCO and the winding up and dissolution of UTOCO; and

(4) to transact such other business as may properly come before the meeting.

Only stockholders of record at the close of business on June 12, 1956, are entitled to notice of and to vote at such Special Meeting or any adjournment or adjournments thereof.

A. J. BADGER,
President.

Salt Lake City, Utah
June 12, 1956.

UTAH OIL REFINING COMPANY

Proxy Statement

I. PROXY.

The enclosed proxy is being solicited by the management of Utah Oil Refining Company (hereinafter called UTOCO), and will be voted at the Special Meeting of Stockholders on July 11, 1956, and any and all adjournments thereof. It is intended that the proxy will be voted in accordance with any choice specified on the proxy with respect to the matters numbered (1), (2) and (3) thereon. Any proxy may be revoked by the person giving it at any time before it is exercised.

As of June 12, 1956, there were outstanding 1,391,116 shares of Common Stock of UTOCO. At the special meeting each stockholder of record as of the close of business on such date will be entitled to one vote on each matter presented for each share registered in such stockholder's name.

II. PROPOSED TRANSFER OF ASSETS BY, AND LIQUIDATION AND DISSOLUTION OF, UTOCO.

The purpose of the special meeting of stockholders is to consider a series of matters stated in the Notice of Meeting which, if approved, would result in the transfer of all of UTOCO's assets to a newly organized, wholly-owned subsidiary of Standard Oil Company, an Indiana corporation (hereinafter called Standard), and the receipt by UTOCO from such subsidiary of a number of shares of the Capital Stock of Standard sufficient to give each UTOCO stockholder one share of Standard stock for each two shares of UTOCO stock held by him. Under the proposed plan the Standard stock would be distributed to the UTOCO stockholders on the 1-for-2 basis shortly after its receipt by UTOCO and thereupon UTOCO would be dissolved.

Standard owns 1,008,640 shares of the Common Stock of UTOCO. Standard Oil Foundation, Inc., an Indiana charitable corporation (hereinafter called the Foundation), owns 71,380 shares of such Common Stock.

Because of Standard's ownership of more than a majority of the outstanding Common Stock of UTOCO, Standard has, for many years, included UTOCO's assets, liabilities and earnings in the consolidated financial statements of Standard and its subsidiaries presented to its stockholders, with appropriate provisions in such financial statements with respect to the interests of the minority stockholders of UTOCO.

In the opinion of UTOCO's Board of Directors it would be to the advantage of the minority stockholders of UTOCO to substitute for their present minority ownership in UTOCO a direct interest in Standard through the medium of acquiring Capital Stock of Standard. Some of the reasons for this opinion are as follows:

1. Standard's estimated reserves of crude oil and natural gas liquids on a consolidated basis as of December 31, 1955 (see page 7) totaled 2,097 million barrels as contrasted with an estimated 3[illegible] million barrels for UTOCO, which converted to a per share basis for each company as of that date indicate 63.4 barrels per share for Standard against 2.7 barrels per share for UTOCO. It will be noted from the data included in this proxy statement that reserves of crude oil and natural gas liquids are stated in quantities without dollar values.

[fol. 34]

2. Standard's estimated natural gas reserves on a consolidated basis as of December 31, 1955 (see page 7) totaled 11,890 billion cubic feet as compared to an estimated 7.4 billion cubic feet for UTOCO, which converted to a per share basis for each company as of that date would amount to 359.2 thousand cubic feet per share for Standard against 5.3 thousand cubic feet per share for UTOCO. The reserves are also stated in quantities without dollar values.

3. It will also be noted (page 14) that listed securities carried by Standard on a consolidated basis as of December 31, 1955, at a value of $44,848,529 had a market value on that date of $247,239,000, a difference of $202,390,471, while similar figures for UTOCO (page 32) show securities carried on its books consolidated at a value of $977,546 with a market value of $1,840,000, a difference of $862,454. On a comparative per share basis, the excess of market value over the carrying value of such securities would be $6.12 per share for Standard and $0.62 per share for UTOCO.

4. The Capital Stock of Standard is listed on the New York, Midwest and San Francisco Stock Exchanges, and, accordingly, a more active market for the stock is afforded than for the Common Stock of UTOCO, which is dealt in on an over-the-counter basis.

In the opinion of UTOCO's Board of Directors a comparison of data such as these indicate that the proposed ratio of one share of Standard for two shares of UTOCO would be advantageous to UTOCO stockholders from the long-range viewpoint.

Standard heretofore has caused Ten West Broadway Oil Corporation (hereinafter called TENOCO) to be organized under the laws of the State of Delaware as a wholly owned subsidiary of Standard. By an Agreement dated December 16, 1955, Standard has agreed that at the request of TENOCO it will subscribe for 99,800 additional shares of TENOCO's Common Stock and will issue in payment therefor 695,558 shares of the Capital Stock of Standard, having a par value of $25 per share. Such shares of the Capital Stock of Standard are hereinafter sometimes referred to as Standard Stock. TENOCO is authorized to engage in the same kind of business now being carried on by UTOCO and, prior to the closing of the transactions hereinafter described, will be authorized to carry on such business in the State of Utah and the other states in which UTOCO is now qualified as a foreign corporation.

An agreement dated June 11, 1956 (hereinafter called the Agreement), has been entered into between UTOCO and TENOCO under which it is proposed in substance that all of the assets of UTOCO, including its name, trade-marks, business and good will, shall be transferred and sold to TENOCO in consideration of the transfer by TENOCO to UTOCO of the Standard Stock and the assumption by TENOCO of all of the liabilities of UTOCO.

Upon the completion of such transactions UTOCO would distribute the Standard Stock to its stockholders in complete liquidation and would voluntarily dissolve pursuant to the procedures specified under the laws of the State of Utah. The details of such transactions are set forth below.

A. Agreement

The terms of the proposed transfer of UTOCO's assets to TENOCO are set forth in the Agreement, a copy of which is annexed hereto as Appendix 1. The approval of such Agreement and of such transfer and sale will be submitted to a vote of the stockholders as set forth as the matter numbered (1) in the notice of the special meeting. The terms of such transactions and of the Agreement are summarized below.

Upon the approval of the Agreement and such transfer and sale and of the other matters to be submitted to the special meeting of UTOCO stockholders UTOCO will sell, assign, transfer and convey to TENOCO all properties and assets of UTOCO of every kind and nature whatsoever, including its name, trade-marks, business, and good will. In consideration thereof TENOCO will transfer to UTOCO the Standard Stock and will assume all the obligations and liabilities of UTOCO including all of its liabilities arising in connection with the transactions contemplated by the Agreement. At the conclusion of such

transactions the only asset of UTOCO will consist of the Standard Stock. All costs and expenses of carrying out the transactions described in this Proxy Statement, including expenses incident to the dissolution of UTOCO, will be borne by TENOCO so that all of the Standard Stock will be distributable to the UTOCO stockholders.

The Agreement contains certain representations and warranties of both UTOCO and TENOCO. It provides that as a condition to TENOCO's obligations thereunder the Agreement and the transfer and sale of assets as contemplated thereby and the other matters to be presented to the stockholders of UTOCO at the special meeting shall be approved by the affirmative vote of Standard and the holders of more than 50% of the outstanding stock of UTOCO other than Standard and the Foundation. It further provides as a condition to the obligations of both UTOCO and TENOCO, that Standard, UTOCO and TENOCO shall have entered into Closing Agreements with the Commissioner of Internal Revenue in forms satisfactory to them respectively to the effect that the consummation of the transactions contemplated by the Agreement will not result in any taxable gain or deductible loss to Standard, UTOCO or TENOCO. The Agreement further provides that the Standard Stock at the time of the delivery thereof to UTOCO shall have been listed on the New York, Midwest, and San Francisco Stock Exchanges.

Other action is required to be taken by UTOCO under the Agreement subsequent to the consummation of the transfer and sale as set forth below.

B. Amendment of the Amended Articles of Incorporation of UTOCO.

It is anticipated that TENOCO will adopt the name "Utah Oil Refining Company" upon the consummation of the transfer and sale. In order to make this name available to TENOCO, a proposal to change UTOCO's name will be submitted to a vote of the stockholders as set forth in the notice of the special meeting as matter numbered (2). If the transactions are approved as required by the Agreement then upon the completion of the transfer and sale the amendment will be made effective.

C. Distribution of Standard Stock and Dissolution of UTOCO.

If the transactions are all approved as required by the Agreement, it is the intention of UTOCO as soon as practicable after the transfer and sale has been completed, to distribute the Standard Stock to the stockholders of UTOCO prior to its dissolution. These steps require the filing of certain affidavits and other documents with the State Tax Commission and the Secretary of State of Utah, and the publication of certain notices. It is anticipated that such steps will require approximately three weeks time and that the distribution of the Standard Stock may be made to the UTOCO stockholders on or about August 8, 1956. Such distribution will be on the basis of one (1) share of Standard Stock for each two (2) shares of the Common Stock of UTOCO. Following such distribution an appropriate application will be filed in the District Court of Salt Lake County, Utah, seeking voluntary dissolution of UTOCO. Such proceedings, even though authorized, will not be carried out if the transfer and sale of assets is not effected pursuant to the Agreement. In the event that UTOCO, after the Closing Date, shall receive any dividends or other distributions on the Standard Stock UTOCO shall redistribute such dividends or other distributions in full to its stockholders as dividends.

In the distribution of such shares of Standard Stock no fractional shares will be issued, but Standard will issue bearer scrip certificates for any resulting fractional interests, which scrip certificates, when combined with scrip certificates of like import will be exchangeable, within two years after issuance, for the number of full shares of Capital Stock of Standard represented by the scrip certificates surrendered. After two years, Capital Stock of Standard represented by scrip not theretofore surrendered will be sold and during the ensuing three years scrip certificates may be surrendered for cash. Such scrip certificates will not entitle the holder to any voting, dividend or other rights of shareholders, but upon surrender for full shares any dividends or other distributions declared in respect of such full shares between the date of original issuance of such scrip certificates and the date of surrender will be paid to the surrendering holders. After five years such scrip certificates will become void.

D. Tax Consequences of the Transactions.

Under date of May 21, 1956 the Commissioner of Internal Revenue ruled, pursuant to application therefor filed by Standard, that under existing Federal Income Tax laws no gain or loss will be recognized to the stockholders of UTOCO upon the exchange of their UTOCO stock for Standard Stock pursuant to the contemplated transactions, and further that the basis of the Standard Stock in the hands of the UTOCO stockholders will be the same as the basis of the UTOCO stock exchanged therefor. No representation is made with respect to the tax consequences of the transactions under the various State and local laws.

E. Abandonment of Agreement.

Section 8 of the Agreement sets forth certain conditions under which it may, and certain other conditions under which it must, be abandoned and terminated.

III. FINANCIAL INFORMATION.

Attention is called to the financial statements hereinafter set forth. Further financial statements are omitted as not being material in the circumstances for the exercise of prudent judgment in connection with stockholders' action relative to the contemplated transactions.

Summaries of Earnings

The following summaries of earnings of Standard and its subsidiaries consolidated which include Standard's interest in the earnings of UTOCO and its subsidiary consolidated, and of UTOCO and its subsidiary consolidated for the ten years ended December 31, 1955, have been reviewed by Price Waterhouse & Co., independent public accountants, whose opinion thereon is included elsewhere in this Proxy Statement. The data for the three years ended December 31, 1955, should be read in conjunction with the more detailed financial statements and related notes included herein.

STANDARD

(In thousands of dollars)

Years ended December 31	Sales and operating revenues	Profit from operations before depreciation, etc.	Depreciation, depletion, amortization, retirements, and abandonments	Other income	Earnings before interest, taxes on income, etc.	Interest expense	Federal and state taxes on income	Earnings applicable to minority interests	Net earnings (1)(2)	Net earnings per share of Capital Stock (3)	Dividends per share of Capital Stock (4)
1946	$ 650,616	$123,719	$ 49,000	$17,024	$ 91,743	$ 983	$20,867	$2,243	$ 67,650	$2.22	$ 1.[illegible]
1947	910,746	157,900	52,841	12,064	117,123	2,144	22,229	3,655	89,095	2.92	1.[illegible]
1948	1,236,958	253,485	70,894	8,828	191,419	4,489	42,311	4,540	140,079	4.58	1.[illegible]
1949	1,158,125	213,746	80,524	12,158	145,380	6,803	31,976	3,933	102,668	3.36	1.[illegible]
1950	1,302,990	258,563	82,661	15,192	191,094	6,898	55,093	5,522	123,581	4.05	1.[illegible]
1951	1,539,120	320,893	86,972(5)	19,927	253,848	6,103	93,014	6,034	148,697	4.86	1.[illegible]
1952	1,592,122	258,266	95,735(5)	24,773	187,304	8,672	53,240	5,411	119,981	3.91	2.[illegible]
1953	1,709,511	288,437	113,397(5)	19,893	194,933	11,002	53,709	5,396	124,826	4.06	1.[illegible]
1954	1,660,343	269,077	123,131(5)	16,195	162,141	11,301	30,277	3,406	117,157	3.75	2.[illegible]
1955	1,781,318	321,138	139,181(5)	32,636	214,591	11,987	44,257	1,229	157,118	4.81	2.[illegible]

(1) In 1948 the method of accounting for vacations was changed from a payment to an accrual basis and the earnings for 1947 have been charged with payments of $5,786,157 made in 1948 for vacations earned in 1947.

(2) Net earnings for the year 1946 were increased $5,334,000 by the sale of 200,000 shares of Standard Oil Company (New Jersey) stock and 52,400 shares of Consolidated Natural Gas Company stock; for the year 1952, were increased $4,945,000 by the sale of the investment in Taylor Oil and Gas Co. (formerly Petroleum Heat and Power Company); and for the year 1955, were increased $9,235,000 by the sale of an interest in certain producing properties.

(3) Per share earnings were computed on the basis of average shares each year, but after adjustment for the share-for-share distribution of capital stock in 1954.

(4) The dividends shown (which have been adjusted for the share-for-share distribution of capital stock in 1954) include $0.377, $0.344, $0.568, $0.852, $0.760, $0.682, $0.833, and $1.003, respectively, for each of the years 1946 through 1955 as the market values on the dates of distribution of the dividends paid in capital stock of Standard Oil Company (New Jersey).

(5) Includes excess of amortization over normal depreciation on emergency facilities: $225,000 in 1951, $1,343,000 in 1952, $5,513,000 in 1953, $9,956,000 in 1954, and $14,023,000 in 1955.

Dividends have been paid by Standard on its Capital Stock for 63 consecutive years. Annexed hereto as Appendix II is a copy of a letter dated June 30, 1955, from Robert E. Wilson and F. O. Prior, Chairman and President, respectively, of Standard to its stockholders stating the intention of the Board of Directors of Standard as to its dividend policy for the next several years.

UTOCO

(In thousands of dollars)

Years ended December 31	Sales and operating revenues	Profit from operations before depreciation, etc.	Depreciation, depletion, amortization, retirements, and abandonments	Other income (net)	Earnings before interest, taxes on income, etc.	Interest expense	Federal and state taxes on income	Net earnings (1)	Net earnings per share of Capital Stock (2)	Dividends per share of Capital Stock
1946	$26,333	$ 5,058	$ 845	$ 98	$4,311	$169	$1,504	$2,638	$1.90	$ .50
1947	36,531	5,581	1,019	102	4,664	138	1,740	2,786	2.00	.60
1948	46,070	7,027	1,054	131	6,104	150	2,220	3,734	2.68	.60
1949	56 883	7,335	1,256	258	6,337	147	2,291	3,899	2.80	.60
1950	54,982	9,453	1,576	161	8,238	103	3,752	4,383	3.15	1.00
1951	54,625	8,981	1,475	148	7,654	86	4,453	3,115	2.24	1.00
1952	54,061	8,680	1,544	174	7,310	114	3,932	3,264	2.35	1.00
1953	55,568	8,477	1,632	286	7,131	108	3,870	3,153	2.27	1.00
1954	58,354	8,348	1,756	113	6,705	154	3,212	3,339	2.40	1.00
1955	62,283	11,042	1,918	172	9,296	152	4,738	4,406	3.17	1.30

(1) In 1948 the method of accounting for vacations was changed from a payment to an accrual basis and the earnings for 1947 have been charged with payments of $154,708 made in 1948 for vacations earned in 1947.

(2) Per share earnings were computed on the basis of the number of shares issued at the end of the respective years.

IV. STOCK OF STANDARD AND UTOCO.

The issued shares of Capital Stock of Standard are listed on the New York, Midwest and San Francisco Stock Exchanges. The reported high and low sales prices of the Capital Stock of Standard on the New York Stock Exchange for each of the years 1946 to 1953, inclusive, and for each quarterly period during the years 1954 and 1955 and the first quarter of 1956 are set forth in the following table. The Common Stock of UTOCO is not listed on any exchange but is traded on the over-the-counter market. The reported range of the high asked and low bid prices for the Common Stock of UTOCO on such over-the-counter market for the above periods are set forth in the following table.

	Standard Capital Stock*		Utah Common Stock	
	High	Low	High	Low
1946	24⅛	18⅛	17	10½
1947	22⅛	18⅜	16	13
1948	26⅛	18⅞	15	10
1949	22⅛	18⅛	14½	10
1950	30⅜	21⅛	16	14
1951	39¼	29⅛	26½	22
1952	46	35⅜	36¾	24
1953	40¾	32⅛	36	21½
1954 1st Quarter	39⅜	34¼	34	21½
2nd Quarter	41⅛	38⅜	31	26¼
3rd Quarter	47¾	37½	31	28½
4th Quarter	48½	44⅜	36	27
1955 1st Quarter	49⅞	44	29	26
2nd Quarter	53¾	42¾	29	26
3rd Quarter	53¾	48⅜	30	26½
4th Quarter	52⅞	47¾	30	24½
1956 1st Quarter	62½	48½	30½	24

*Adjusted to give effect to the share-for-share distribution made in 1954.

V. BUSINESSES OF STANDARD AND UTOCO.

Standard, together with its subsidiaries, including UTOCO and its subsidiary, constitutes one of the largest oil companies in the United States. It is an integrated operating oil company, being engaged in the exploration for, and the development, production, purchase and transportation of crude oil, and in the manufacture, purchase, transportation and marketing of refined products.

UTOCO is an operating oil company, being engaged principally in the purchase and transportation of crude oil, and in the manufacture, transportation and marketing of refined products. It also participates in exploration for and the development and production of crude oil. UTOCO's subsidiary owns and operates the Utah Oil Building in Salt Lake City, Utah.

The principal products of the companies are gasoline, kerosene, fuel oils, lubricating oils, asphalts and various chemical products. They also sell large quantities of crude oil, liquefied petroleum gases and natural gas.

Production of crude oil, natural gas liquids and natural gas is currently being obtained by Standard and its subsidiaries, including UTOCO, principally from the States of Colorado, Kansas, Louisiana, New Mexico, Oklahoma, Texas and Wyoming. In 1955 this production (net) amounted to 274,100 barrels a day of crude oil and natural gas liquids and 1,086,000 thousand cubic feet a day of natural gas. Production of crude oil is currently being obtained by UTOCO principally from the States of Colorado and Utah, and of natural gas from Wyoming and Colorado. In 1955 this production (net) amounted to [illegible] barrels a day of crude oil and 605 thousand cubic feet a day of natural gas.

Net reserves of crude oil and natural gas liquids of Standard and its subsidiaries, including UTOCO, were estimated as of December 31, 1955, to be 2,097 million barrels of which 226 million barrels were natural gas liquids and net reserves of natural gas were estimated to be 11,890 billion cubic feet. Net reserves of crude oil and natural gas liquids of UTOCO were estimated as of December 31, 1955, to be 38 million barrels of which 351 thousand barrels were natural gas liquids and net reserves of natural gas were estimated to be 7.4 billion cubic feet.

Standard and its subsidiaries, including UTOCO, owned approximately 9,600 miles of crude oil pipelines (exclusive of about 5,220 miles of gathering lines), approximately 2,420 miles of product pipelines and 160 miles of natural gas pipelines at December 31, 1955. UTOCO owned approximately [illegible] miles of crude oil pipelines (exclusive of about 77 miles of gathering lines), and 6 miles of product pipelines.

Standard owns 5 lake tankers with an aggregate deadweight tonnage of 34,650 tons and a subsidiary owns 9 ocean-going tankers with an aggregate deadweight tonnage of 140,886 tons.

Refined products of Standard and its subsidiaries are currently being obtained principally from owned refineries located at Whiting, Indiana; Sugar Creek, Missouri; Wood River, Illinois; Mandan, North Dakota; Neoglesha, Kansas; Casper, Wyoming; Baltimore, Maryland; Savannah, Georgia; Texas City, Texas; Eldorado, Arkansas; and Destrehan, Louisiana; as well as from the refinery of UTOCO at Salt Lake City, Utah. Such refineries of Standard and its subsidiaries, including UTOCO, had an average daily input of crude oil and natural gas liquids in 1955 of approximately 601,500 barrels. UTOCO's refinery had an average daily input in the same period of approximately 28,200 barrels.

Standard and its subsidiaries market their products extensively throughout most of the United States. Motor gasolines are sold under various brand names such as STANDARD RED CROWN, STANDARD WHITE CROWN, PAN-AM, AMOCO, and AMERICAN; motor oils under various brand names such as PERMALUBE, STANOLUBE, POLARINE, and AMOCO; and domestic heating oils under various brand names such as STANDARD FURNACE OIL and STANDARD HEATER OIL. UTOCO conducts its marketing operations in the States of Idaho, Nevada, Oregon, Utah and Washington, with gasoline under the brand name UTOCO, and motor oils under the brand names UTOCO and PEAK-LUBE.

Standard, together with its subsidiaries, including UTOCO, supply a total of approximately 30,140 retail outlets, including about 4,830 service stations which they own and approximately 11,100 which they lease. Except for a few company operated training stations, all these retail outlets are operated by independent dealers. Such companies also own and operate over 4,400 bulk plants from which service stations and consumer accounts, principally farms, are supplied by tank trucks. UTOCO supplies a total of about 700 retail outlets, including about 240 service stations which it owns and approximately 430 which it leases. UTOCO also owns and operates about 80 bulk plants from which retail outlets and consumer accounts are supplied.

VI. CERTAIN MINORITY STOCKHOLDERS OF UTOCO.

A group of stockholders of UTOCO owns an aggregate of 140,519 shares of the Common Stock of UTOCO. If the liquidation of UTOCO becomes effective, such UTOCO stockholders will receive for their UTOCO Common Stock shares of Standard Stock, as follows:

Name	Shares of UTOCO Common Stock	Shares of Standard Stock*
Bennett Association	30,000	15,000
David W. Bennett	100	50
Frances G. Bennett	400	200
H. H. Bennett	2,000	1,000
Richard S. Bennett	3,500	1,750
Robert F. Bennett	100	50
Rosetta W. Bennett	200	100
Wallace F. Bennett	2,000	1,000
Wallace G. Bennett	150	75
J. D. Campbell	1,000	500
May N. Doscher	475	237
John L. Firmage	250	125
Rosemary B. Fletcher	100	50
Lois M. Greenwood	897	448
M. J. Greenwood	1,421	710
Mattie Wattis Harris	917	458
William H. Harris	10,000	5,000
Phyllis G. Harvey	930	465
Ruth Harris Hite	777	388
Edward S. Holt	4,540	2,270
Reed E. Holt	500	250
Frances B. Jeppson	100	50
Elise F. Musser	1,407	703
Samuel C. Powell	750	375
Mabel W. Reynolds	100	50
Stephen L. Richards	584	292
Katherine E. Sage	4,450	2,225
Hilda Sandmann	400	200
Aurelia H. Schettler, Trustee under Declaration of Trust dated June 24, 1955, with Catherine A. Lowe Hampton	135	67

Name	Shares of UTOCO Common Stock	Shares of Standard Stock*
Dan B. Shields	1,200	600
George Smith	400	200
Mary B. Smith	1,500	750
Genevieve Stafford	1,892	946
Harold B. Stafford	1,992	996
Tracy-Collins Trust Co.	4,331	2,165
Tracy-Collins Trust Co., Guardian of the Estate of Sabina Degnan	150	75
Tracy-Collins Trust Co., Guardian of the Estate of A. J. Duquesne	667	333
Walker Bank & Trust Co., Trustee under the Will of James J. Burke, Deceased	250	125
Walker Bank & Trust Co., Trustee under deed of Trust dated November 1, 1948 with Charles B. Petty and Maggie C. Petty	100	50
Walker Bank & Trust Co., Executor of the Estate of Margaret Burke Raleigh, Deceased	549	274
Walker Bank & Trust Co., Executor of the Estate of Emma R. Selbach, Deceased	800	400
Walker Bank & Trust Co., Trustee under Will of Ernest A. Tripp, Deceased	425	212
A. C. Wallace	3,856	1,928
Elen Wallace	300	150
Henry A. Wallace, Jr.	200	100
Ina Claire Wallace	480	240
John M. Wallace	45,814	22,907
John M. Wallace, Jr.	20	10
M. Elen Wallace	50	25
William R. Wallace	2,874	1,437
William R. Wallace, Jr.	3,161	1,580
Elizabeth B. Winters	1,325	662

*Excluding fractional interests for which bearer scrip certificates will be issued.

Standard and such UTOCO stockholders have mutually agreed to vote or cause to be voted all the shares of Common Stock of UTOCO owned by them respectively in favor of each of the matters numbered (1), (2) and (3) respectively in the Notice of Meeting and Proxy at the special meeting of stockholders of UTOCO.

Pursuant to application therefor filed by Standard, the Commissioner of Internal Revenue ruled that the transactions herein contemplated will not result in the realization of gain or loss by Standard, UTOCO, TENOCO, or the stockholders of UTOCO, and tendered Closing Agreements for execution by the respective corporations confirming such ruling. The Closing Agreements have been approved and executed by the respective corporations and returned to the Commissioner for his signature. If the Closing Agreements shall not have been executed by the Commissioner prior to the time the stockholders of UTOCO shall vote on the approval of the agreement and the transfer and sale contemplated thereby, Standard and the above listed UTOCO stockholders have agreed to vote their respective shares of Common Stock

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UTOCO at such meeting for the rejection of all of the above matters numbered (1), (2) and (3). It is expected that the Closing Agreements will have been executed and returned by the Commissioner prior to July 11, 1956, the date upon which the special meeting will be convened. If the Closing Agreements have not been so executed and returned, the special meeting may be adjourned pending receipt of the executed Closing Agreements.

VII. MISCELLANEOUS.

As pointed out above the Agreement provides that none of the matters to be considered at the special meeting will be made effective unless all such matters are approved not only by Standard but also by the holders of more than 50% of the outstanding shares of stock of UTOCO other than shares held by Standard and the Foundation. The majority so specified is substantially in excess of the vote required in respect of each of such matters under the applicable provisions of the Utah Code Annotated.

In addition to the solicitation of proxies by use of the mails, certain officers and regular employees of UTOCO may solicit proxies by personal interview, mail, telephone or telegraph and may request brokerage houses and other custodian nominees and fiduciaries to forward soliciting material to the beneficial owners of stock. UTOCO also will reimburse brokers and their nominees for their expenses in forwarding soliciting material to the beneficial owners of stock held of record by such parties.

The Utah Code Annotated makes no provision with respect to rights of appraisal or similar rights of any stockholders who dissent to the proposed transactions described in this Proxy Statement.

At the date hereof the management of UTOCO knows of no matter not specifically set forth in the notice of special meeting to be presented for action at the meeting. In the event that any other matter properly comes before the meeting or any adjournment thereof, it is intended that the persons named in the accompanying form of proxy and acting thereunder will vote in accordance with their judgment.

If you cannot attend the meeting, please fill in, execute and return the enclosed proxy in the addressed envelope provided, which requires no postage if mailed in the United States. Your cooperation in giving this matter your immediate attention will be appreciated.

By order of the Board of Directors.

UTAH OIL REFINING COMPANY

June 12, 1956.

OPINION OF INDEPENDENT PUBLIC ACCOUNTANTS

To—

STANDARD OIL COMPANY (INDIANA):
UTAH OIL REFINING COMPANY:

In our opinion, the accompanying financial statements (listed in the foregoing index) present fairly the financial position of Standard Oil Company (Indiana), of that company and its subsidiaries consolidated, of Utah Oil Refining Company, and of that company and its subsidiary consolidated, as at December 31, 1955, and the results of their operations for the three years then ended, in conformity with generally accepted accounting principles applied on a consistent basis throughout the period. Our examinations of the statements for the three years ended December 31, 1955 were made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

We have made similar examinations of the consolidated financial statements of Standard and its subsidiaries consolidated, and of Utah and its subsidiary consolidated, for the years 1946 to 1952, inclusive, and in our opinion, the information set forth under the heading "Summaries of Earnings" for the ten years ended December 31, 1955 fairly summarizes the results from their operations for that period.

PRICE WATERHOUSE & CO.

Chicago, Illinois
February 24, 1956

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APPENDIX I

AGREEMENT BETWEEN UTAH OIL REFINING COMPANY AND TEN WEST BROADWAY OIL CORPORATION

THIS AGREEMENT entered into, as of the 11th day of June, 1956, by and between UTAH OIL REFINING COMPANY, a Utah corporation (hereinafter called "UTOCO"), and Ten West Broadway Oil Corporation, a Delaware corporation (hereinafter called "TENOCO"),

WITNESSETH:

UTOCO has an authorized capital of $7,500,000 divided into 1,500,000 shares of Common Stock, of the par value of $5 per share, of which 1,391,116 shares are issued and outstanding. Of such issued and outstanding shares, 1,008,640 shares (approximately 72.51%) are owned by Standard Oil Company, an Indiana corporation (hereinafter called "Standard"), 382,476 shares (approximately 27.49%) are owned by approximately 995 other stockholders of UTOCO. TENOCO, which is a wholly owned subsidiary of Standard, proposes that the corporate name and all of the assets of UTOCO be transferred and sold to TENOCO, and that in consideration thereof, TENOCO shall transfer to UTOCO 695,558 shares of the Capital Stock of Standard, having a par value of $25 per share (which shares are hereinafter called "Standard Stock"), and shall assume all of the liabilities of UTOCO. UTOCO proposes that, upon the consummation of such transfer and sale, UTOCO will change its corporate name, will distribute the Standard Stock to the stockholders of UTOCO in complete liquidation, and thereafter will voluntarily dissolve, all such action to be subject to the approval of the stockholders of UTOCO.

It is intended hereby to set forth the terms of and the conditions upon which such transfer and sale shall be carried out, and the procedures under which the change of name and the complete liquidation and dissolution of UTOCO shall be accomplished.

Now, THEREFORE, it is agreed:

1. *Representations and Warranties of TENOCO.* TENOCO hereby represents and warrants to UTOCO as follows:

(a) TENOCO is a corporation duly organized and existing and in good standing under the laws of the State of Delaware, and has the corporate power to enter into this Agreement and to acquire the assets and assume the liabilities of UTOCO as provided herein.

(b) Standard, by agreement dated December 16, 1955, has agreed with TENOCO that, at the request of TENOCO, Standard will subscribe for additional stock of TENOCO and will issue and deliver the Standard Stock in payment thereof; and that all of the shares of Standard Stock, when so delivered, will be of the same class and have the same rights as the shares of Capital Stock of Standard presently outstanding, will be duly issued, fully paid up and nonassessable, and will be listed on the New York, Midwest, and San Francisco Stock Exchanges.

(c) The Board of Directors of TENOCO has approved this Agreement and transactions contemplated herein, and has authorized the execution and delivery hereof by TENOCO.

2. *Representations and Warranties of UTOCO.* UTOCO hereby represents and warrants to TENOCO as follows:

(a) UTOCO is a corporation duly organized and existing and in good standing under the laws of the State of Utah, and has the corporate power to own its properties and to carry on its business as now being conducted.

(b) UTOCO has an authorized capital of $7,500,000 divided into 1,500,000 shares of Common Stock of the par value of $5 per share, of which 1,391,116 shares are issued and outstanding, and 108,884 shares are authorized but unissued.

(c) UTOCO has furnished to TENOCO the following financial statments: the consolidated balance sheets of UTOCO and subsidiary company as of December 31, 1955, and the consolidated statements of income and of capital in excess of par value of capital stock and earnings retained and invested in the business for the three years ended December 31, 1955, duly certified by Price Waterhouse & Co. The balance sheets fairly represent the consolidated financial condition of UTOCO and its subsidiary company as at the dates thereof, and the consolidated results of and operations for the periods indicated in conformity with generally accepted accounting principles applied on a consistent basis. Since December 31, 1955, there has been no material adverse change in the consolidated financial condition of UTOCO, and its subsidiary company, other than changes incurred in the ordinary course of business.

(d) Since December 31, 1955, neither UTOCO nor its subsidiary company (i) has issued any stock, bonds or other corporate securities; (ii) incurred any obligation or liability absolute or contingent except current liabilities incurred and obligations under contracts entered into in the ordinary course of business; (iii) redeemed any of its shares of Common Stock or declared or made any payment or distribution to stockholders of UTOCO other than an extra dividend of thirty cents ($0.30) per share paid on January 16, 1956, the regular dividend of twenty-five cents ($0.25) per share paid on March 15, 1956 and a regular dividend of twenty-five cents ($0.25) per share declared on May 22, 1956 payable on June 15, 1956; (iv) mortgaged, pledged or subjected to lien or any other encumbrance any of its assets, tangible or intangible, except in each case in the ordinary course of business or (v) sold or transferred any of its tangible assets or cancelled any debts or claims except in each case in the ordinary course of business.

(e) The Board of Directors of UTOCO has approved this Agreement and transactions contemplated herein, and has authorized the execution and delivery hereof by UTOCO.

3. *Action to Be Taken by UTOCO.*

(a) Promptly upon the execution of this Agreement, UTOCO will mail to its stockholders notice of the special meeting of such stockholders, heretofore called by the Board of Directors of UTOCO, to be convened on July 11, 1956 (which meeting may be adjourned from time to time), to take action upon the following proposals:

(i) The approval of this Agreement and the transfer and sale by UTOCO to TENOCO of all assets of UTOCO, including its name, trade-marks, business and good will, in exchange for the Standard Stock and the assumption by TENOCO of all the obligations and liabilities of UTOCO including all of its liabilities arising in connection with the transactions contemplated by this Agreement.

(ii) The approval of the amendment of the Amended Articles of Incorporation of UTOCO to change the name of UTOCO to some name wholly dissimilar to "Utah Oil Refining Company".

(iii) The approval of the liquidation and voluntary dissolution of UTOCO.

(iv) The approval of the distribution of the assets of UTOCO (consisting of the Standard Stock) prior to decree of court of the voluntary dissolution.

(b) UTOCO further agrees to use reasonable efforts to obtain the favorable vote of the holders of more than 50% of the outstanding stock of UTOCO other than Standard and Standard Oil Foundation, Inc., to approve the proposals referred to in subparagraph (a) of this Section 3.

(c) If the stockholders of UTOCO shall approve the proposals referred to in subparagraph (a) of this Section 3, UTOCO shall:

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(i) take all steps necessary to effect the transfer and sale to TENOCO of UTOCO's assets, including its name, trade-marks, business and good will, all as contemplated by this Agreement, provided, however, that a blanket transfer and assignment shall constitute compliance with subparagraph (d) of Section 8 hereof,

(ii) take all steps necessary to effect the change of its corporate name pursuant to the approved form of amendment of its Amended Articles of Incorporation; such action to be completed in Utah within two full business days after the completion of the transfer and sale of UTOCO's assets to TENOCO and in the other states in which UTOCO is qualified to do business as soon as conveniently practicable, and

(iii) take all steps necessary to effect the liquidation and voluntary dissolution of UTOCO and the distribution of the assets of UTOCO; such action to be completed as soon as reasonably possible after the completion of said transfer and sale of UTOCO's assets to TENOCO.

(d) In the event that UTOCO, after the Closing Date, shall receive any dividends or other distributions on the Standard Stock, UTOCO shall redistribute such dividends or other distributions in full to its stockholders as dividends.

4. *Action to Be Taken by TENOCO.*

(a) If the Standard Stock shall not theretofore have been issued to TENOCO, then promptly after the stockholders of UTOCO have approved the proposals referred to in subparagraph (a) of Section 3 of this Agreement, TENOCO shall request Standard to issue the Standard Stock and shall take all steps which are necessary to be taken by TENOCO to obtain delivery thereof.

(b) TENOCO shall take all steps necessary to complete the acquisition of the assets of UTOCO and to assume the liabilities of UTOCO all as contemplated by this Agreement.

5. *The Closing.*

(a) The closing will take place at the offices of UTOCO, 10 West Broadway, Salt Lake City, Utah, on July 13, 1956, or at such other time, date and place or places as shall be fixed by mutual agreement of the parties (herein referred to as the "Closing Date").

(b) On the Closing Date, subject to the terms and conditions contained in this Agreement,

(i) in consideration of the action to be taken by UTOCO under subdivision (iii) of this subparagraph (b), TENOCO will transfer to UTOCO the Standard Stock.

(ii) TENOCO will assume all of the obligations and liabilities of UTOCO, including all of its liabilities in connection with the transactions contemplated by this Agreement, whether arising before or after the closing.

(iii) UTOCO will sell, assign, transfer and convey to TENOCO all properties and assets of UTOCO of every kind and nature whatsoever, including its name, trade-marks, business and good will.

(c) The Standard Stock shall be represented by one certificate registered in the name of TENOCO with proper stock power or other instruments of transfer.

(d) UTOCO agrees that the transfer of its properties and assets shall be by deeds, bills of sale, assignments or other instruments of transfer as shall be appropriate to carry out the intent of this Agreement and sufficient to convey all of the title of UTOCO to the respective properties and assets. In the case of assignments of leases or other instruments requiring the consent of another party thereto, UTOCO agrees to use its best efforts to obtain such written consent. UTOCO further agrees that it will execute and deliver to TENOCO on and after the Closing Date, such other instruments, and do and perform all such other acts as may reasonably be required by TENOCO fully to convey and

transfer to, and vest in TENOCO, and protect its right, title and interest in and enjoyment of, all of the assets and property of UTOCO intended to be assigned, transferred and conveyed pursuant to the provisions hereof, including any assets and property received after the Closing Date other than the Standard Stock and any dividends or other distributions in respect thereof.

(e) UTOCO shall deliver or cause to be delivered at the time of the closing all books, papers and records of UTOCO except stock books and stock registers, and such other books, papers, and records as do not relate to the properties or operations of UTOCO.

(f) TENOCO, subject to the conditions herein set forth, shall indemnify UTOCO against, and hold it harmless from, all liabilities of UTOCO.

6. *Conditions to Obligations of TENOCO.* The obligations of TENOCO hereunder are subject to the conditions that at or before the Closing Date:

(a) At the special meeting of stockholders of UTOCO heretofore called by its Board of Directors to be convened on July 11, 1956 (which meeting may be adjourned from time to time), the proposals referred to in subparagraph (a) of Section 3 of this Agreement are approved by the affirmative vote of Standard and the holders of more than 50% of the outstanding stock of UTOCO other than that held by Standard and Standard Oil Foundation, Inc.

(b) Standard and TENOCO shall have entered into Closing Agreements with the Commissioner of Internal Revenue in forms satisfactory to them respectively to the effect that the transactions contemplated hereby will not result in any taxable gain or deductible loss to Standard or to TENOCO.

(c) The representations and warranties made by UTOCO herein shall be true as of the Closing Date, with the same force and effect as though such representations and warranties had been made as of the Closing Date except to the extent that such representations and warranties shall be untrue as of the Closing Date because of (i) events or changes (not materially adversely affecting the business, property or financial condition of UTOCO, provided that operating losses shall not be deemed to have any such material adverse effect) occurring or arising after the date hereof in the ordinary course of business of UTOCO, or (ii) the declaration and payment by UTOCO of additional regular quarterly cash dividends not exceeding with respect to each such dividend twenty-five cents ($0.25) per share, provided, however, that in no event shall UTOCO declare a third regular quarterly cash dividend in 1956 prior to July 14, 1956.

(d) TENOCO shall have received an opinion of counsel for UTOCO, dated the Closing Date, in form satisfactory to TENOCO, to the effect that (i) UTOCO is duly incorporated under the laws of the State of Utah, is authorized to carry on its business in that State, and is qualified as a foreign corporation and authorized to carry on its business in the States of Arizona, Colorado, Idaho, Nevada, Oregon, Washington and Wyoming; (ii) UTOCO has full power and authority to sell, convey, assign, transfer and deliver its assets, including its name, trade-marks, business and good will to TENOCO as herein provided; (iii) all corporate and other proceedings required to be taken by, or on the part of, UTOCO to authorize it to carry out this Agreement and so to sell, convey, assign, transfer and deliver its assets, including its name, trade-marks, business and good will, have been duly and properly taken, and (iv) the respective votes of the stockholders of UTOCO taken at the special meeting provided for in paragraph (a) of this Section 6, meet the requirements of this Agreement.

7. *Conditions to Obligations of UTOCO.* The obligations of UTOCO hereunder are subject to the conditions that on or before the Closing Date:

(a) The stockholders of UTOCO shall have approved the proposals referred to in subparagraph (a) of Section 3 in the manner provided by subparagraph (a) of Section 6 of this Agreement.

(b) TENOCO shall be a duly organized and existing corporation authorized to do business in Delaware, the state of its incorporation, and in the State of Utah, and authorized to acquire the

assets of UTOCO and to assume all of the obligations and liabilities of UTOCO as contemplated by this Agreement.

(c) TENOCO shall have acquired the Standard Stock.

(d) The representations and warranties made by TENOCO herein shall be true as of the Closing Date, with the same force and effect as though such representations and warranties had been made as of the Closing Date.

(e) UTOCO shall have entered into a Closing Agreement with the Commissioner of Internal Revenue in form satisfactory to UTOCO to the effect that the transactions contemplated hereby will not result in any taxable gain or deductible loss to UTOCO.

(f) UTOCO shall have received an opinion of counsel for TENOCO, dated the Closing Date, in form satisfactory to UTOCO, to the effect that (i) TENOCO is duly incorporated under the laws of the State of Delaware, and is authorized to carry on its business in that state and in the State of Utah, (ii) TENOCO has full power and authority to enter into this Agreement and to acquire the assets of UTOCO and to assume all of the obligations and liabilities of UTOCO as provided in this Agreement, and (iii) all corporate and other proceedings required to be taken by or on the part of TENOCO to authorize it to carry out this Agreement and to purchase the assets of UTOCO and to assume UTOCO's liabilities have been duly and properly taken.

(g) UTOCO shall have received an opinion of counsel for Standard, dated the Closing Date, in form satisfactory to UTOCO, to the effect that (i) Standard has full power and authority to issue the Standard Stock to TENOCO and all corporate and other proceedings required to be taken on the part of Standard to authorize the issuance thereof, have been duly and properly taken, and (ii) the Standard Stock has been duly issued and is fully paid up and nonassessable.

(h) The Standard Stock at the time of the delivery thereof shall have been listed on the New York, Midwest and San Francisco Stock Exchanges.

8. *Abandonment and Termination.* TENOCO and UTOCO may, by mutual consent evidenced by resolutions of their respective Boards of Directors, abandon and terminate this Agreement at any time prior to the closing hereunder, without liability on the part of either party or its directors, officers or stockholders to the other. Either party by action of its Board of Directors may abandon and terminate this Agreement at any time prior to action taken by the stockholders of UTOCO, as contemplated by subparagraph (a) of Section 6 hereof, without liability on the part of such party or its directors, officers or stockholders to the other party.

This Agreement shall in any event be abandoned and terminated without liability on the part of either party hereto, or their respective directors, officers or stockholders, unless prior to December 1, 1956 (which date may be extended from time to time by mutual consent of the parties hereto evidenced by resolutions of their respective Boards of Directors), all of the following events shall have occurred:

(a) all of the Closing Agreements mentioned in subparagraph (b) of Section 6 hereof and subparagraph (e) of Section 7 hereof shall have been entered into;

(b) the stockholder approvals required in subparagraph (a) of Section 6 of this Agreement shall have been given;

(c) the Standard Stock shall have been listed on the New York, Midwest and San Francisco Stock Exchanges; and

(d) the transfer and sale of the assets of UTOCO pursuant to the provisions of this Agreement shall have taken place.

9. *Notices.* Any notices to be given hereunder by either party hereto to the other shall be in writing and delivered personally or sent by registered mail, postage prepaid, if to TENOCO addressed to TENOCO, 910 South Michigan Avenue, Chicago, Illinois, and if to UTOCO addressed to UTOCO 10 West Broadway, Salt Lake City, Utah.

In Witness Whereof, the parties hereto have caused this Agreement to be executed in their respective corporate names by their respective presidents or one of their respective vice-presidents thereunto duly authorized, and their respective corporate seals to be hereunto affixed and attested by their respective secretaries or one of their respective assistant secretaries, as of the day and year first above written.

TEN WEST BROADWAY OIL CORPORATION

(Seal)

By Merwin Bristol
President.

Attest:

Hunter L. Johnson, Jr.
Secretary.

UTAH OIL REFINING COMPANY

(Seal)

By A. J. Badger
President.

Attest:

J. Floyd Stoker
Secretary.

[fol. 80]

APPENDIX II

STANDARD OIL COMPANY
(INDIANA)

EXECUTIVE OFFICES

910 SOUTH MICHIGAN AVENUE
CHICAGO 80, ILLINOIS

June 30, 1955

To Our Stockholders:

Some of our stockholders have asked that we clarify our policy with regard to the portion of our total dividends which we have been paying in Standard Oil Company (New Jersey) stock.

Our Company has declared such special dividends (in addition to quarterly cash dividends) once each year for the past seven years. Owners who held enough shares of our stock to entitle them to one or more full shares of the Jersey stock have received such stock; owners whose holdings would otherwise entitle them to fractional shares have received equivalent payments in cash.

Many financial publications, in listing or tabulating dividends, either ignore this special payment or merely list our regular cash dividends with a footnote: "plus stock dividend." Such a footnote generally means only a distribution of some additional shares of a company's own stock. The result is that our Company's total dividend payments are often interpreted as being substantially lower than they are.

No board of directors can make binding commitments as to future dividend policy, which will necessarily be affected by a variety of considerations not known in advance. However, your board feels that it can properly point out to stockholders the reasoning behind its dividend policy over the past seven years and its present thinking with regard to future declarations.

In order to build up crude oil reserves and keep up with the rapidly growing demand for improved petroleum products, the plowing back of a substantial portion of earnings has been, and probably will continue to be, essential in our industry. Over the past ten years we have paid out as dividends a slightly larger percentage of earnings than that paid by the industry as a whole. In each of the past seven years a special dividend, of variable amount, in Jersey stock has been used to bring the total payments to the desired level.

For the seven years, 1945 through 1951, our total dividend payments averaged 37.9 percent of earnings as compared with a weighted average of 37.7 percent of earnings paid out by the thirty largest oil companies. For the last three years the Company has tried to bring its total dividend declaration up to about 50 percent of earnings and it has actually averaged 51.6 percent as compared with a weighted average of 44.3 percent for the thirty companies.

The percentage of income paid out has, however, fluctuated considerably from year to year, partly because it is impossible to know on the declaration date what the market price of Jersey stock will be on the date of distribution about seven weeks later, and partly because five out of seven of our special dividends have been declared in the third quarter when it was too early to approximate our probable earnings for the full year.

In view of the foregoing, your directors have decided to authorize this statement of their present intention as to dividend policy for the next several years. That present intention is to continue to sup-

plement regular cash dividends by a special dividend in an amount sufficient to bring our total dividend declaration in any year to about 50 percent of that year's earnings.

In order to approximate this percentage more closely, your board intends to declare such future special dividends *in the fourth quarter*. Ordinarily such special dividends will be in the form of Standard Oil Company (New Jersey) stock, with compensating cash payments in lieu of fractional shares. Declaring the special dividend in this form has the advantages of conserving cash, of saving capital gains taxes to the Company, and of giving stockholders receiving the Jersey stock the option of either holding a valuable stock or selling it to augment their cash income.

Very truly yours

ROBERT E. WILSON
Chairman

F. O. PRIOR
President

[fol. 82]

COLLECTIVE EXHIBIT "C"

Utah Oil Refining Company

UTAH OIL BUILDING

Salt Lake City 10, Utah July 17, 1956

O THE STOCKHOLDERS OF UTAH OIL REFINING COMPANY, A UTAH CORPORATION, HICH BY AMENDMENT TO ITS ARTICLES OF INCORPORATION IS NOW NAMED UBRA OIL COMPANY:

A special meeting of the stockholders of your Company was held pursuant notice at the offices of the Company, at Room 704, 10 West Broadway, Salt Lake ity, Utah, on Wednesday, July 11, 1956, at ten o'clock a. m., Mountain Standard ime.

1,391,116 shares of the stock of the Company were issued and outstanding nd entitled to vote at the meeting. 1,352,608 shares, or 97.2% of the stock, ere represented at the meeting by stockholders in person or by proxy. 1,336,880 hares were voted for, and 15,728 shares were voted against, the adoption of esolutions with respect to:

(1) The transfer and sale of the assets of the Company;

(2) The change of the name of the Company to Lubra Oil Company; and

(3) The liquidation and dissolution of the Company.

opies of these resolutions as approved by the shareholders are enclosed herewith.

This letter and the accompanying copies of resolutions are being mailed o all shareholders of the Company, and particularly to those shareholders of ecord who did not participate in person or by proxy in the meeting when the esolutions were adopted.

It is anticipated that the withdrawal and distribution of the assets of he Company, in accordance with the resolutions, will take place on or about ugust 8, 1956.

In the near future you will receive a letter explaining the procedures o be followed in connection with the distribution of the assets.

Yours truly,

H. J. Daugherty

President, Utah Oil Refining Company, a Utah Corporation, which by amendment to its Articles of Incorporation is now named Lubra Oil Company

COLLECTIVE EXHIBIT "C"

RESOLUTIONS ADOPTED BY THE SHAREHOLDERS OF UTAH OIL REFINING COMPANY (WHICH BY AMENDMENT TO ITS ARTICLES OF INCORPORATION IS NOW NAMED LUBRA OIL COMPANY) AT A SPECIAL MEETING OF THE SHAREHOLDERS HELD ON JULY 11, 1956

1. Concerning the transfer and sale of the assets:

RESOLVED, That after the transfer and sale by Utah Oil Refining Company of all of its assets to Ten West Broadway Oil Corporation pursuant to and in accordance with the terms of the Agreement dated June 11, 1956, which Agreement and the transfer of assets to be consummated pursuant thereto have been confirmed and approved by the stockholders of Utah Oil Refining Company at this Special Meeting, the Company liquidate and distribute its assets resulting from the consummation of such transactions, wind up its affairs and dissolve.

RESOLVED, That after the transfer and sale by the Utah Oil Refining Company of all of its assets to Ten West Broadway Oil Corporation, pursuant to and in accordance with the terms of the Agreement dated June 11, 1956, and prior to the entry of a decree of court of competent jurisdiction dissolving the Company, the assets and property of the Company then owned by it be withdrawn and distributed pro rata to the stockholders of the Company provided, however, that in the course of such pro rata distribution, the 695,558 shares of the capital stock of Standard Oil Company, an Indiana corporation, to be received by Utah Oil Refining Company in the consummation of the aforementioned transactions shall be distributed to the stockholders of the Company on the basis of one share of such capital stock of Standard Oil Company for each two shares of the outstanding common stock of the Company.

2. Concerning the change of the name:

RESOLVED, That the name of Utah Oil Refining Company be changed to Lubra Oil Company, and that ARTICLE I of the Amended Articles of Incorporation of Utah Oil Refining Company be changed to be and read as follows:

"ARTICLE I

The name of this corporation shall be Lubra Oil Company."

3. Concerning the liquidation and dissolution:

RESOLVED, That the Agreement dated June 11, 1956, between Utah Oil Refining Company and Ten West Broadway Oil Corporation, a Delaware corporation, pursuant to the terms of which Utah Oil Refining Company would transfer and sell to Ten West Broadway Oil Corporation all of the assets and property of Utah Oil Refining Company, including its name, trademarks, business and good will, in consideration of: (i) 695,558 shares of the capital stock of Standard Oil Company, an Indiana corporation, having a par value of $25.00 per share, and (ii) the assumption by Ten West Broadway Oil Corporation of all of the liabilities of Utah Oil Refining Company, including all debts and taxes owing by and claims and demands against Utah Oil Refining Company, and the acts of the officers of the Utah Oil Refining Company in executing and delivering said Agreement for and on its behalf, be and the same are in all respects confirmed and approved.

RESOLVED, That the transfer and sale of all the assets and property of Utah Oil Refining Company to Ten West Broadway Oil Corporation, pursuant to the terms of the Agreement dated June 11, 1956, a copy of which was presented to this meeting, hereby in all respects authorized, confirmed and approved, and the officers of Utah Oil Refining Company are hereby authorized and directed to carry into effect the provisions of said Agreement and to consummate such transfer and sale in the manner and for the consideration set forth in said Agreement.

[fol. 84]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OTTO BEHIMER and JOHN A. ROBERTS,

Plaintiffs,

vs.

STANDARD OIL COMPANY, an Indiana corporation, and STANDARD OIL FOUNDATION, INC., an Indiana charitable corporation,

Defendants.

ANSWER AND MOTIONS TO DISMISS OF STANDARD OIL FOUNDATION, INC.—Filed March 10, 1958

Now comes STANDARD OIL FOUNDATION, INC., an Indiana charitable corporation, by Weymouth Kirkland, Howard Ellis, John C. Butler, and Louis J. Keating, its attorneys, and for answer to the Complaint of Otto Behimer and John A. Roberts, says:

1. This defendant adopts as its own, and incorporates by reference as if fully set out herein, the answer and exhibits thereto of defendant Standard Oil Company to the Complaint of Otto Behimer and John A. Roberts.

2. This defendant further states that it is a charitable corporation, organized unde and pursuant to the provisions of the Indiana General Not for Profit Corporation Act, Acts 1935, Ch. 157, S. 1 et seq., as amended (Title 25, Chapter 5, Burns Indiana Statutes Annotated), to promote educational, charitable, scientific and literary purposes.

[fol. 85] 3. This defendant further states that it held, pursuant to the purposes for which it was organized, 71,380 shares of stock of Utah Oil Refining Company, a Utah corporation, for which it received in exchange 35,690 shares of the capital stock of defendant Standard Oil Company, pursuant to the proposals set forth in the notice and proxy statement attached as Exhibit B to the answer of said defendant.

4. Defendant moves to dismiss this suit, insofar as it may purport to be a derivative or secondary action by shareholders pursuant to Rule 23 (b) of the Federal Rules of Civil Procedure, for the following reasons;

A. The failure to join Utoco (by change of name Lubra Oil Company) as a party to this suit, such corporation being an indispensable party.

B. The failure of plaintiffs to verify their complaint under oath, as required by Rule 23 (b) of the Federal Rules of Civil Procedure.

C. The failure of plaintiffs to set forth with particularity their efforts to secure from the Utoco shareholders such action as they desire, as required by Rule 23 (b) of the Federal Rules of Civil Procedure.

[fol. 86] D. The absence of Tenoco (by change of name Utah Oil Refining Company, a Delaware corporation) as a party to this suit, such corporation being the purchaser and transferee of the assets of Utoco.

E. The failure of plaintiffs to allege a derivative or secondary cause of action.

5. Defendant moves to dismiss this suit, insofar as it may purport to be an action pursuant to rule 23 (a) (1) of the Federal Rules of Civil Procedure, for the following reasons:

A. The Complaint fails to allege facts showing that the plaintiffs are proper representatives of, or will adequately represent, the class on whose behalf they purport to sue and, on the contrary, they are not such representatives of the class described in the Complaint so as to entitle them to maintain this action.

B. The class which plaintiffs purport to represent does not in fact exist.

C. The class which plaintiffs purport to represent, if such can be said to exist, has affirmatively authorized and approved that of which plaintiffs complain.

D. The absence of Tenoco (by change of name Utah Oil Refining Company, a Delaware corporation) as a party to this suit, such corporation being the purchaser and transferee of the assets of Utoco.

[fol. 87] E. The character of the right which plaintiffs seek to enforce is not joint, common or secondary.

6. Defendant moves to dismiss this suit, insofar as it may purport to be an action pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure, for the following reasons:

A. The persons similarly situated to plaintiffs are not so numerous as to make it impracticable to bring them all before the Court.

B. There is no common question of law or fact affecting the several rights of plaintiffs and of persons alleged to be similarly situated to plaintiffs.

C. The absence of Tenoco (by change of name Utah Oil Refining Company, a Delaware corporation) as a party to this suit, such corporation being the purchaser and transferee fo the assets of Utoco.

Wherefore, Standard Oil Foundation, Inc. prays judgment dismissing the Complaint.

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Weymouth Kirkland

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Howard Ellis

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John C. Butler

.....

Louis J. Keating

Kirkland, Fleming, Green, Martin & Ellis
—130 East Randolph Drive—RA 6-2929—
Attorneys for defendant, Standard Oil Foundation, Inc.

Thomas E. Sunderland
Richard J. Farrell
Of Counsel

[fol. 88]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OTTO BEHIMER and JOHN A. ROBERTS,

Plaintiffs,

vs.

STANDARD OIL COMPANY, an Indiana corporation, and STANDARD OIL FOUNDATION, INC., an Indiana charitable corporation,

Defendants.

JOINT MOTION OF STANDARD OIL COMPANY AND STANDARD OIL FOUNDATION, INC., FOR TRANSFER OF THIS SUIT TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION—Filed March 11, 1958

Standard Oil Company and Standard Oil Foundation, Inc., defendants herein, by Weymouth Kirkland, Howard Ellis, John C. Butler and Louis J. Keating, move that this Court enter an order pursuant to Section 1404 (a) of the Judicial Code (28 USCA 1404 (a)) transferring this suit to the United States District Court for the District of Utah, Central Division.

As grounds for this motion, these defendants state:

1. This is a civil action brought by a resident of New York and a resident of Illinois complaining of the transfer and sale of assets by Utah Oil Refining Company, a corporation organized and existing under the laws of Utah (hereinafter called Utoco) to Ten West Broadway Oil Cor-
[fol. 89] poration, a corporation organized and existing under the laws of Delaware (hereinafter called Tenoco), in July of 1956, pursuant to the affirmative approval and authorization of the holders of more than 96.1% of the outstanding stock of Utoco.

2. Plaintiffs purport to bring this action "in a representative capacity on behalf of themselves and the other minority stockholders of Utoco who are or were similarly situated to Plaintiffs, as a representative suit." (Complaint, para. 6). Plaintiffs complain that Tenoco, alleged to be wholly owned and controlled by defendants, acquired all the assets (and assumed all the liabilities) of Utoco at a price which was "below the fair market value thereof" (Complaint, para. 9) and that this was accomplished because of the control and domination which defendants and others exercised over the officers and directors of Utoco.

3. Plaintiff Otto Behimer held 900 shares of Utoco stock, and plaintiff John A. Roberts held 1000 shares of such stock, at the time of the transfer, out of a total of 1,391,116 shares of Utoco stock then issued and outstanding. (Complaint, paras. 1, 4).

4. As appears from the Answer of the defendant Standard Oil Company:

A. On June 12, 1956, notice was given to the Utoco stockholders of a special stockholders' meeting, to be held on July 11, 1956 in Salt Lake City, Utah, to consider and vote for or against:

[fol. 90] (1) The approval of the agreement of June 11, 1956 between Utoco and Tenoco, and the confirmation and approval of the transfer and sale of the assets of Utoco to Tenoco, pursuant to the agreement;

(2) The change of name of Utoco to Lubra Oil Company or some other name dissimilar to "Utah Oil Refining Company"; and

(3) The liquidation and distribution of the assets of Utoco and the winding up and dissolution of Utoco.

A copy of the notice of the said special meeting, together with a proxy statement, was sent to all stockholders of record of Utoco at the close of business on June 12, 1956. Such notice and proxy statement are attached as Exhibit B to the Answer of defendant Standard Oil Company.

B. Although not required by the General Rules and Regulations of the Securities and Exchange Commission (since Utoco was not a company whose stock was listed on a national exchange), the proxy statement was prepared with respect to information required in a proxy statement used by a listed company.

C. Attached as Appendix 1 to the said proxy statement is a copy of the agreement of June 11, 1956 between Utoco and Tenoco (Plaintiff's Exhibit 1), which set forth the terms of the proposed transfer and sale of Utoco's assets to Tenoco. The terms of the said agreement and of the [fol. 91] transfer and sale, which were among the subjects noticed for consideration by, and approval or disapproval of, the Utoco stockholders at the special meeting called for July 11, 1956, are summarized on pages 2 and 3 of the proxy statement.

D. On July 11, 1956, defendant Standard Oil Company held 1,008,640 shares of Utoco's outstanding stock and defendant Standard Oil Foundation, Inc. held 71,380 such shares.

E. As one of the conditions to the fulfillment of the agreement, and to the transfer and sale of the assets of Utoco to Tenoco, it was provided in the agreement (paragraph 6 thereof) that the said transfer and sale must be approved by the aforesaid stockholders meeting by the affirmative vote of defendant Standard Oil Company and of the holders of more than 50% of the outstanding stock of Utoco other than that held by defendants Standard Oil Company and Standard Oil Foundation, Inc.

F. At the special meeting of the stockholders of Utoco, held on July 11, 1956 pursuant to the aforesaid notice, there were present, by person or by proxy, the holders of 1,352,608 shares of Utoco stock, out of a total outstanding 1,391,116 shares of such stock. The results of the stockholders' votes on the subjects noticed for the meeting were as follows:

[fol. 92]

Subject	Number of Shares For	Against
The approval of the agreement of June 11, 1956 between Utoco and Tenoco, and the confirmation and approval of the transfer and sale of the assets of Utoco to Tenoco	1,336,880	15,728
The change of name to Lubra Oil Company	1,336,880	15,728
The liquidation and distribution of the assets of Utoco and the winding up and dissolution of Utoco	1,336,880	15,728

Each of the three subjects was therefore approved by the affirmative vote of the holders of more than 96.1% of the outstanding stock of Utoco. The Utoco stockholders voting negatively on such subjects accounted for approximately 1.1%, and such stockholders who did not vote accounted for approximately 2.8%, of such outstanding stock.

G. Excluding the Utoco stock held by the defendants Standard Oil Company and Standard Oil Foundation, Inc., which was voted affirmatively on the above subjects, the Utoco stockholders' action thereon was:

Subject	Number of Shares For	Against	Not Present
The approval of the agreement of June 11, 1956 between Utoco and Tenoco, and the confirmation and approval of the transfer and sale of the assets of Utoco to Tenoco	256,860	15,728	38,508

[fol. 93]

The change of name to Lubra Oil Company	256,860	15,728	38,508
The liquidation and distribution of the assets of Utoco and the winding up and dissolution of Utoco	256,860	15,728	38,508

Each of the three subjects was therefore approved by the affirmative vote of approximately 82.57% of the outstanding stock of Utoco other than that held by defendants Standard Oil Company and Standard Oil Foundation, Inc. The Utoco stockholders voting negatively on such subjects accounted for approximately 5.05%, and such stockholders who did not vote accounted for approximately 12.38%, of such outstanding stock other than that held by defendants Standard Oil Company and Standard Oil Foundation, Inc.

H. In pursuance of the aforesaid stockholder authorization, the agreement between Utoco and Tenoco of June 11, 1956 was completed and Utoco transferred and sold its assets to Tenoco and received from Tenoco in consideration therefor 695,558 shares of the capital stock of defendant. Thereafter, by charter amendment, Tenoco changed its name to Utah Oil Refining Company and Utoco changed its name to Lubra Oil Company. On July 17, 1956 and again on July 25, 1956, the stockholders of Lubra Oil Company (Utoco) were notified by letter of its president of the action taken at the special meeting of July 11, 1956 and instructed as to the manner of exchanging their shares for [fol. 94] shares of the capital stock of defendant Standard Oil Company. Copies of these two letters are attached as Collective exhibit C to the Answer of defendant Standard Oil Company.

I. On August 9, 1956, Lubra Oil Company (Utoco) made application for dissolution to the District Court of the State of Utah, Third Judicial District, County of Salt Lake, which application was on that day ordered filed, and hearing thereon set for September 25, 1956. The former stockholders os Utoco were notified of this application for dissolution, both by published notice and by personal mail. On September 25, 1956, pursuant to the provisions of Title 78, Chapter 42 of the Utah Code Annotated, a decree of dissolution was entered by said Court (a copy of which decree is attached as Exhibit A to the Answer of defendant Standard Oil Company) without intervention or protest on the part of any stockholder.

J. As of a date shortly prior to the filing of the Answer by defendant Standard Oil Company, the holders of all but

9,674 shares of the former Utoco stock (or approximately 99.31%) had surrendered such stock and received defendant Standard Oil Company's stock in exchange therefor on the approval basis of two shares of the former for one of the latter. The tabulation of such exchange (excluding the two defendants therefrom) is as follows:

[fol. 95]

(1) Stockholders Who Voted Affirmatively	
a. Exchange effected	256,538
b. Exchange not yet effected (5 holders)	322
Total	256,860
(2) Stockholders Who Voted Negatively	
a. Exchange effected	7,354
b. Exchange not yet effected (17 holders)	8,374
Total	15,728
(3) Stockholders Not Present	
a. Exchange effected	37,530
b. Exchange not yet effected (5 holders)	978
Total	38,508

5. The stockholders on whose behalf plaintiffs purport to act are stated to be "themselves and the other minority stockholders of Utoco who are or were similarly situated to Plaintiffs" (Complaint, para. 6), being the holders of "170,577 shares of Utoco owned by others, includint the Plaintiffs herein, referred to herein as the Minority Stockholders." (Complaint, para. 5). As of July 11, 1956, such stockholders were 920 in number, and resided (according to Utoco's stock register) in thirty-five different states, districts and territories, as follows:

State, District or Territory	Number of Stockholders	Number of Shares
Utah	575	94,584
California	80	20,677
New York	79	27,628
Washington	37	2,738

[fol. 96]

Illinois	20	6,309
New Jersey	20	1,836

State, District or Territory	Number of Stockholders	Number of Shares
Idaho	17	1,531
Colorado	11	2,104
Nevada	11	2,546
Maryland	6	366
Maine	5	180
Missouri	5	418
Pennsylvania	5	389
Florida	4	285
Wisconsin	4	165
Hawaii	4	4,474
Connecticut	3	175
Massachusetts	3	310
Minnesota	3	196
Nebraska	3	507
Ohio	3	240
District of Columbia	3	535
Wyoming	3	1,064
Arizona	2	229
Kansas	2	150
Tennessee	2	29
Texas	2	93
Iowa	1	146
Kentucky	1	100
[fol. 97]		
Louisiana	1	300
Montana	1	20
North Carolina	1	30
Oklahoma	1	50
Oregon	1	150
Virginia	1	23
Totals	920	170,577

6. For the following reasons it is for the convenience of parties and witnesses and in the interest of justice that this suit be transferred to the United States District Court for the District of Utah, Central Division:

A. The majority of the class purported to be represented by plaintiffs in this suit, both in number of holders and in number of shares held, reside in Utah

or contiguous States. This is therefore good reason for holding the trial in their view and reach rather than in Chicago where they can learn of it only by report.

B. The evidence in this case will necessarily involve the testimony of witnesses who reside in Utah, including the allegedly "controlled" stockholders and allegedly "dominated" officers and directors of Utoco. The transfer of this suit to Salt Lake City will ease the problem of access to sources of proof, such as the availability and cost of process for the attendance of witnesses.

[fol. 98] C. The records of Utoco are kept in Utah, resort to which would be awkward and expensive in Chicago litigation.

D. The business of Tenoco (now by change of name Utah Oil Refining Corporation), the purchaser and transferee of Utoco's assets, would be disrupted by the absence of its officers and directors to attend to pre-trial and trial proceedings of this suit in Chicago.

E. The physical property transferred from Utoco to Tenoco is located in the States of Arizona, Colorado, Idaho, Nevada, Oregon, Utah, Washington and Wyoming. Any view thereof, if thought desirable, would be more easily and less expensively accomplished, if this suit were transferred to Salt Lake City.

F. Tenoco (by change of name Utah Oil Refining Corporation), the purchaser and transferee of the assets of Utoco for an amount claimed by the plaintiffs to be less than their fair market value, would appear to be a necessary party to this suit. It is subject to service of process in the District Court at Salt Lake City, but not in Chicago.

[fol. 99] G. The substantive law of Utah applies to the cause of action pleaded in this suit. There is the appropriateness in having the trial of this diversity case in a forum that is at home with the governing law of Utah, rather than having this court untangle problems in conflict of laws, and in a law foreign to itself.

H. The docket of this Court is one of the most congested in the country, whereas that of the transferee Court is relatively uncongested. It is a factor of public interest to avoid the administrative difficulties which follow when litigation is piled up in congested centers instead of being handled at its origin.

7. The defendants, by their attorneys, formally assure this Court that, in the event of the transfer of this suit as requested, their personal appearances will be entered in, and they will waive any legal privilege they may have as to the venue of, the United States District Court for the District of Utah, Central Division.

Wherefore, the defendants request leave to file affidavits and a brief in support of this motion within such time as may be fixed by this Court; and they further request that this motion be set down for oral argument on some date convenient to the Court after an opportunity has been [fol. 100] provided for the filing of affidavits and briefs in support of and in opposition to this motion.

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Weymouth Kirkland

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Howard Ellis

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John C. Butler

.....

Louis J. Keating

KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS
130 East Randolph Drive
RAndolph 6-2929
Attorneys for defendants Standard Oil Company and Standard Oil Foundation, Inc.

Thomas E. Sunderland
Richard J. Farrell
of Counsel

[fol. 101]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CIVIL ACTION NO. 50 C 238

OTTO BEHIMER and JOHN A. ROBERTS,

Plaintiffs,

vs.

STANDARD OIL COMPANY, an Indiana corporation, and STANDARD OIL FOUNDATION, INC., an Indiana charitable corporation,

Defendants.

AFFIDAVIT OF GRANT A. BROWN IN SUPPORT OF THE JOINT MOTION OF STANDARD OIL COMPANY AND STANDARD OIL FOUNDATION, INC., FOR TRANSFER OF THIS SUIT TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION—Filed March 27, 1958

GRANT A. BROWN, being first duly sworn, on oath deposes and says:

1. I am fifty-one years of age and am General Counsel of Utah Oil Refining Company, a Delaware corporation (formerly known as Ten West Broadway Oil Corporation), herein sometimes called the Delaware company. I was appointed to this position on July 13, 1956. Prior to that time, I was General Counsel of Utah Oil Refining Company, a Utah corporation, herein sometimes called the [fol. 102] Utah company, acting in that capacity from November 1, 1954 to July 13, 1956, when the Utah company sold and transferred its assets to the Delaware company. I know either from my own personal knowledge or from persons working under my direction that all of the facts stated in this affidavit are true.

2. The captioned suit complains of the Utah company's sale and transfer of its assets to the Delaware company

pursuant to an alleged plan on the part of the two defendants, together with fifty-one other non-defendant persons and institutions (who among them held 1,220,539 shares out of a total of 1,391,116 issued and outstanding shares of the Utah Company), to utilize their majority control of that company so as to permit the two defendants to acquire such assets at a price below their fair market value.

3. The fifty-one stockholders of the Utah company, who allegedly permitted the two defendants to acquire such assets below their fair market value, are named in paragraph 5 of the complaint. According to the stock register of the Utah company, such persons and institutions are, with two exceptions, all residents of the State of Utah. A list of their names and addresses, together with their share holdings in the Utah company as of July 11, 1956, as taken from the said stock register, is attached hereto as APPENDIX A.

4. The two plaintiffs, according to the complaint "Bring [fol. 103] this action in a representative capacity on behalf of themselves and the other minority stockholders of (the Utah company) who are or were similarly situated to Plaintiffs, as a representative suit." (Complaint, para. 6). According to the stock register of the Utah company, as of July 11, 1956 these minority stockholders (defined in paragraph 5 in the complaint to be the holders of 170,577 shares of stock of the Utah company) were 920 in number and resided in thirty-five different States, districts and territories, as follows:

State, District or Territory	Number of Stockholders	Number of Shares
Utah	575	94,584
California	80	20,677
New York	79	27,628
Washington	37	2,738
Illinois	20	6,309
New Jersey	20	1,836
Idaho	17	1,531
Colorado	11	2,104
Nevada	11	2,546

State, District or Territory	Number of Stockholders	Number of Shares
Maryland	6	366
Maine	5	180
Missouri	5	418
Pennsylvania	5	389
[fol. 104]		
Florida	4	285
Wisconsin	4	165
Hawaii	4	4,474
Connecticut	3	175
Massachusetts	3	310
Minnesota	3	196
Nebraska	3	507
Ohio	3	240
District of Columbia	3	535
Wyoming	3	1,064
Arizona	2	229
Kansas	2	150
Tennessee	2	29
Texas	2	93
Iowa	1	146
Kentucky	1	100
Louisiana	1	300
Montana	1	20
North Carolina	1	30
Oklahoma	1	50
Oregon	1	150
Virginia	1	23
TOTALS	920	170,577

[fol. 105] 5. The complaint charges that the two defendants dominated and controlled the officers and directors of the Utah company. On July 11, 1956 (which was the date of the special meeting of the stockholders of the Utah company called to consider the sale and transfer of its assets), there were sixteen such officers and directors, all residents of Utah, their names, addresses and positions being as follows:

Name	Address	Office
A. J. Badger*	1533 Westmoreland Drive Salt Lake City, Utah	President and Director
F. R. Clark	1955 Herbert Avenue Salt Lake City, Utah	Vice President and Director
L. B. Taylor*	1863 East 9th South Salt Lake City, Utah	Vice President and Director
P. L. Vander Jagt*	4298 Holloway Drive Salt Lake City, Utah	Vice President and Director
H. M. George*	2533 Glenmare Street Salt Lake City, Utah	Treasurer
F. P. White*	1458 Bryan Avenue Salt Lake City, Utah	Assistant Treasurer
J. Floyd Stoker*	1746 Hollywood Avenue Salt Lake City, Utah	Secretary
M. L. Stayner*	1172 First Avenue Salt Lake City, Utah	Assistant Secretary
G. D. Earnshaw*	1636 Millbrook Road Salt Lake City, Utah	Comptroller
W. L. Olsen*	1875 Herbert Avenue Salt Lake City, Utah	Assistant Comptroller
[fol. 106]		
Wallace F. Bennett*	Box 1320 Salt Lake City 10, Utah	Director
Robert G. Clark*	939 Greenwood Terrace Salt Lake City, Utah	Director
W. H. Harris	c/o Utah Construction Co. First Security Bank Bldg. Ogden, Utah	Director
E. S. Holt*	1037 Douglas Street Salt Lake City, Utah	Director
Stephen L. Richards*	47 East South Temple Salt Lake City, Utah	Director
Henry A. Wallace	1155 Gilmer Drive Salt Lake City, Utah	Director

* Present incumbent of Utah Oil Refining Company (Delaware).

6. The offices of the Utah company were, and of the Delaware company are, located in the Utah Oil Building, in Salt Lake City, Utah. The books and records of the Utah company are stored in such offices, where they are kept in the custody of Messrs. J. Floyd Stoker and G. D. Earnshaw, presently Secretary and Comptroller of the Delaware company. Among such are included the following:

Articles of Incorporation and By-laws

Stock Register

Minute Books

Purchase Orders

[fol. 107]

Material Received Reports

Cancelled Checks

Check Registers

Vouchers

Payroll and Personnel Records

Books of Original Entry

Ledgers, in which are booked

(a) Operations

(b) Capital investments (property records)

(c) Personal Property records

Statements

(a) Operating

(b) Financial

Tax Records

Correspondence Files

7. The physical properties which were sold by the Utah company were located in the States of Arizona, Colorado, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming. By far the greater amount of such physical properties was located in the States of Utah, Idaho, and Wyoming.

8. The Utah Company was licensed to do business and did business in the States of Arizona, Colorado, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming. The Delaware company is licensed to do business and is doing [fol. 108] business in the States of Arizona, Idaho, Nevada, Oregon, Utah, and Washington; the Delaware corporation is licensed to do business but is not doing business in the States of Colorado and Wyoming. The Utah company was not, and the Delaware company is not, licensed to do or doing business in the State of Illinois.

9. Pursuant to notice given to the stockholders of the Utah company on June 12, 1956, a special meeting of such stockholders was held in Salt Lake City on July 11, 1956, at which time and place the holders of 1,336,880 shares of the Utah company stock (out of a total issued and outstanding 1,391,116 such shares) voted affirmatively, among other matters, upon (1) the sale and transfer of the assets of the Utah company to the Delaware company, and (2) the liquidation and distribution of the assets of the Utah company and the winding up and dissolution of the Utah company. Pursuant to such stockholder approval, the Utah company made application for dissolution, and was ordered dissolved, by decree of the District Court of Salt Lake, in conformity with Utah statutes, Title 78, Chapter 42, Utah Code Annotated 1953. The sale and transfer of its assets by the Utah company were effected pursuant to the powers specified by Title 16, Chapter 2, Section 15, Utah Code Annotated 1953.

[fol. 109] 10. The action taken by the Utah company, pursuant to such stockholder authorization, which is challenged by the instant suit, will of necessity concern itself with Utah law with which Utah courts, State and Federal, are naturally more intimately acquainted than courts outside the State of Utah.

11. The Annual Report of the Director of the Administrative Office of the United States Courts for 1957 states that there were pending in the Northern District of Illinois as of June 30, 1957, 2343 civil cases as compared to 112

civil cases in the District of Utah. (P. 172-173). During the fiscal year ended June 30, 1957, the median time interval from filing to disposition of civil cases in which a trial was held, according to this report, was 19.4 months in the Northern District of Illinois as compared with 8.5 months in the District of Utah. (P. 188-189). The number of private civil cases litigated in the Northern District of Illinois has marked that district as one of the busiest in the country, with one of the most congested dockets, and with a caseload per judgeship greatly in excess of the national average. (p. 119-120).

12. I am informed that the travel time and expense for a round trip between Salt Lake City and Chicago by available rail and air routes are as follows:

[fol. 110]

(a) Rail—38 hours 35 minutes to 51 hours 45 minutes	....	$170.87
(b) Air—11 hours 10 minutes to 13 hours 14 minutes	....	187.33

Grant A. Brown

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

Subscribed and sworn to before me this 25th day of March, 1958

Wayne C. Dunham
Notary Public, residing at
Salt Lake City, Utah
My commission
expires 7-31-61

[fol. 111]

APPENDIX "A" TO AFFIDAVIT OF GRANT A. BROWN

APPENDIX A

STOCKHOLDERS OF UTAH OIL REFINING COMPANY
AS OF JULY 11, 1956
AS NAMED IN PARAGRAPH FIVE
OF BEHIMER COMPLAINT

Name	Address	No. of Shares
The Bennett Association	61 West 1st South, Salt Lake City 1, Utah	30,000
David W. Bennett	c/o Wallace F. Bennett 65 West 1st South Salt Lake City, Utah	100
Frances G. Bennett	c/o Bennetts Post Office Box 1320 Salt Lake City, Utah	400
Harold H. Bennett	c/o Z.C.M.I. 15 South Main Salt Lake City, Utah	2,000
Richard S. Bennett	61 West 1st South Salt Lake City, Utah	3,500
Robert F. Bennett	c/o Wallace F. Bennett 65 West 1st South Salt Lake City, Utah	100
Rosetta W. Bennett	176 D Street Salt Lake City 3, Utah	200
Wallace F. Bennett	61 West 1st South Salt Lake City, Utah	2,000
Wallace G. Bennett	c/o Wallace F. Bennett 65 West 1st South Salt Lake City 1, Utah	150
J. D. Campbell	1647 South 15th East Salt Lake City 5, Utah	1,000
May N. Doscher	c/o Tracy Collins Trust Company 151 South Main Salt Lake City, Utah	475

[fol. 112]

Name	Address	No. of Shares
John L. Firmage	c/o Trust Department Walker Bank & Trust Company P. O. Box 1169 Salt Lake City 10, Utah	250
Rosemary B. Fletcher	56 Garden Avenue Chatham, New Jersey	100
Lois M. Greenwood	1590 Vine Street Salt Lake City, Utah	897
M. J. Greenwood	1590 Vine Street Salt Lake City, Utah	1,421
Mattie Wattis Harris	2584 Swaner Place Ogden, Utah	917
William H. Harris	c/o Utah Construction Company First Security Bank Building Ogden, Utah	10,000
Phyllis G. Harvey	2144 East 17th South Salt Lake City, Utah	930
Ruth Harris Hite	2584 Swaner Place Ogden, Utah	777
Edward S. Holt	1037 Douglas Street Salt Lake City, Utah	4,540
Reed E. Holt	Trust Department Walker Bank & Trust Company Salt Lake City, Utah	500
Frances B. Jeppson	c/o Bennetts P. O. Box 1320 Salt Lake City, Utah	100
Elise F. Musser	1133 Harvard Avenue Salt Lake City 5, Utah	1,407
Samuel C. Powell	614 Eccles Building Ogden, Utah	750
Mabel W. Reynolds	c/o Bennetts P. O. Box 1320 Salt Lake City, Utah	100
Stephen L. Richards	47 East South Temple Salt Lake City, Utah	584

[fol. 113]

Name	Address	No. of Shares
Catherine E. Sage	P. O. Box 675 Salt Lake City 9, Utah	4,450
Hilda Sandmann	64 South 9th East Salt Lake City, Utah	400
Aurelia H. Schettler, Trustee under Declaration of Trust dated June 24, 1955, with Catherine A. Lowe Hampton	510 M Street Salt Lake City, Utah	135
Dan B. Shields	419 Judge Building Salt Lake City 1, Utah	1,200
George Smith	821 Westminster Avenue Salt Lake City, Utah	400
Mary B. Smith	446 Douglas Street Salt Lake City 2, Utah	1,500
Genevieve Stafford	1952 Garfield Avenue Salt Lake City 5, Utah	1,892
Harold B. Stafford	1952 Garfield Avenue Salt Lake City 5, Utah	1,992
Tracy Collis Trust Company	151 South Main Street Salt Lake City, Utah	4,331
Tracy-Collins Trust Company, Guardian of the Estate of Sabina Degnan	151 South Main Street Salt Lake City, Utah	150
Tracy-Collins Trust Company, Guardian of the Estate of A. J. DuQuensue	151 South Main Street Salt Lake City, Utah	667
Walker Bank & Trust Company, Trustee under the Will of James J. Burke, Deceased	Salt Lake City, Utah	250
Walker Bank & Trust Company, Trustee under Deed of Trust dated November 1, 1948 with Charles B. Betty and Maggie C. Petty	Main at 2nd South Street Salt Lake City, Utah	100

[fol. 114]

Name	Address	No. of Shares
Walker Bank & Trust Company, Executor of the Estate of Margaret Burke Raleigh, deceased	Main at 2nd South Salt Lake City, Utah	549
Walker Bank & Trust Company, Executor of the Estate of Emma B. Selbach, deceased	2nd South and Main Streets Salt Lake City, Utah	800
Walker Bank & Trust Company, Trustee under Will of Ernest A. Tripp, deceased	Box 1169 Salt Lake City 10, Utah	425
A. C. Wallace	c/o John M. Wallace Walker Bank & Trust Company Salt Lake City, Utah	3,856
Henry A. Wallace, Jr.	1155 Gilmer Drive Salt Lake City 5, Utah	200
Ina Claire Wallace	Brocklebank Apartments 1000 Mason Street San Francisco 8, California	480
John M. Wallace	Trust Department Walker Bank & Trust Company Salt Lake City, Utah	45,814
John M. Wallace, Jr.	2520 Walker Land Salt Lake City 5, Utah	20
M. Elen Wallace	271 Second Avenue Salt Lake City 3, Utah	350
William R. Wallace, Sr.	64 South 9th East Salt Lake City 2, Utah	2,874
William R. Wallace, Jr.	Trust Department Walker Bank & Trust Company Salt Lake City, Utah	3,161
Elizabeth B. Winters	176 D Street Salt Lake City 3, Utah	1,325
	TOTAL	140,519

[fol. 128]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action No. 58 C 238

OTTO BEHIMER and JOHN A. ROBERTS,

Plaintiffs,

vs.

STANDARD OIL COMPANY, an Indiana corporation, and STANDARD OIL FOUNDATION, INC., an Indiana corporation.

Defendants.

AFFIDAVIT OF WARREN E. KING IN OPPOSITION OF JOINT MOTIONS OF DEFENDANTS FOR TRANSFER OF THIS CAUSE TO UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION—Filed April 24, 1958

Warren E. King, being first duly sworn upon his oath, deposes and says:

1. I am an attorney at law, duly licensed to practice before the United States District Court in which this cause is now pending. I am one of the attorneys for plaintiffs herein and I am in active charge of this cause. I am not licensed to practice law before the district courts of any other district.

2. The defendants herein are corporations organized and existing under the laws of the State of Indiana. Defendants have offices within the jurisdiction of, and are amenable to process of the United States District Court for the Northern District of Illinois.

3. Neither Standard Oil Company nor Standard Oil Foundation, Inc. are, or ever were, qualified to do business in the State of Utah, within the jurisdiction of the United States District Court for the District of Utah to the best

[fol. 129] of Affiant's knowledge, niether of the defendants maintains offices in, or has any property, or conducts any business within the jurisdiction of the United States District Court for the District of Utah. Affiant's Exhibit "A" is a copy of a letter received from the Secretary of State of Utah to the effect that neither defendant ever qualified to do business in that State.

4. Plaintiffs, at the present time, do not have any specific witnesses whose names they can present to the Court. The transaction complained of is that the defendants, by exercising control and dominance of UTOCO through their ownership of the majority of the stock of UTOCO, caused the assets of UTOCO to be sold to a wholly owned subsidiary of Standard Oil Company (TENOCO) for far less than the fair value of the UTOCO assets; that the assets of UTOCO were paid for by stock of Standard Oil Company, which stock, in turn, was distributed to the stockholders of UTOCO and UTOCO thereafter dissolved. The very nature of the transaction is one in which the negotiations, valuations, conversations and correspondence, through which the transaction was consummated, are primarily within the knowledge and possession of the defendants and their officers, directors and attorneys.

5. Plaintiffs have not caused an independent appraisal of the UTOCO properties as of the date of sale to be made. Such an appraisal would be inordinately expensive for plaintiffs. On the basis of the published statements of UTOCO it appears that during the operation of UTOCO, in order to depress the market price of UTOCO stock, the directors of UTOCO, acting under the domination of the defendants, failed to expand their operations, both in exploration and development of their oil and gas fields and [fol. 130] in the addition of retail outlets. UTOCO accumulated large amounts of liquid, but non-income producing, assets.

6. Plaintiffs anticipate that the facts adduced by discovery and deposition will disclose that the value of UTOCO stock was far in excess of the price paid for it by TENOCO, and paid for in stock of Standard Oil Company.

7. The price paid for UTOCO's assets, must, of necessity, have been determined by the executive of Standard Oil Company, possibly, and only possibly, after arms-length negotiation with UTOCO's officers and directors. The officers and directors of UTOCO held office only at the sufferance of the defendants. If they did not carry out Standard's bidding, they were subject to being removed at the expiration of their respective terms of office and more obedient directors elected by the defendants, the majority stockholders.

8. Regardless of the independence or subservience of UTOCO directors, an independent judgment must have been made by Standard's executives as to the value of UTOCO. Whether or not that judgment, and the price paid (in Standard stock) was fair to the minority stockholders of UTOCO is the basis of plaintiffs' suit. But, of necessity, Standard must have data, including description of UTOCO's properties and operations, appraisals, both of physical assets and of oil and gas reserves, upon which the judgment must have been based. Affiant believes that sufficient data, documents, appraisals, correspondence and other physical evidence exist in the offices of Standard Oil Company which, together with the depositions and evidence of Standard's officers and executives, living or working in or near Chicago, will be sufficient to prove plaintiffs' case.

[fol. 131] 9. Standard Oil Company has its principal office in Chicago, Illinois, within this judicial district. It occupies a twenty-story building at 910 S. Michigan Avenue, Chicago, Illinois, which is known as the Standard Oil Building. The administrative and executive offices are located there. Its legal department and law library occupy one floor of that building. Sullivan's Law Directory, 1957-58 Edition, page 380, lists over twenty-five attorneys as having their offices in that building, including the general counsel and associate counsel.

10. Affiant believes far more testimony will be given by executives of Standard Oil Company than will be given by executives of UTOCO. It will be far more convenient and less expensive for such of UTOCO's executives as may tes-

tify to come to Chicago than for those executives of Standard Oil who will testify to go to Utah.

11. Affiant believes that discovery and deposition will disclose the physical assets of UTOCO and the estimated reserves of oil and gas. Such data may become the subject of stipulation between the parties. It will then become necessary to obtain expert testimony as to the value of the physical assets, reserves, goodwill and going concern value of UTOCO. Plaintiffs anticipate obtaining such expert testimony from engineers, business analysts, professional appraisers and others, some of whom may be from the large universities located in Chicago.

12. Affiant is a Certified Public Accountant, holds a Master's degree in Business Administration from the Uni- [fol. 132] versity of Chicago and has been on the faculty of one of the larger institutions of higher learning in Chicago, lecturing on finance, investment and economics. Affiant intends to analyse the data disclosed by deposition and discovery and consult with the expert witnesses who will testify as to value. It would work an undue hardship on plaintiffs to require their counsel to travel to Utah and to pay the expense of the expert witnesses to travel to Utah if this case is transferred there.

13. Defendants' general counsel and a large staff of attorneys are located in Chicago. Standard Oil Company is a multi-million dollar concern and well able to afford any expense incidental to their transporting witnesses from Utah to Chicago. While it is not claimed that plaintiffs are impecunious, it is apparent that defendants are far better able to afford to bring their witnesses to Chicago than plaintiffs could afford to send their counsel and witnesses to Utah, or to retain additional counsel to represent them in that forum.

.....

Warren E. King

State of Illinois)
) ss.
County of Cook)

Subscribed and sworn to before
me this 23 day of April, 1958.

.....
Notary Public, residing at
Chicago, Illinois

My commission expires 7/18/59.

[fol. 168]

In the United States District Court
For the Northern District of Illinois
Eastern Division

Otto Behimer and John A. Roberts,

Plaintiffs,

vs.

Standard Oil Company, an Indiana corporation, and Standard Oil Foundation, Inc., an Indiana charitable corporation,

Defendants.

Order of Transfer—June 6, 1958

The defendants, Standard Oil Company and Standard Oil Foundation, Inc., having filed a joint motion to transfer this action to the United States District Court for the District of Utah, Central Division, sitting at Salt Lake City, Utah, pursuant to the provisions of Section 1404 (a) of the Judicial Code (28 USCA 1404 (a)); and

This Court, having considered the joint motion, briefs of counsel, and the affidavit of Grant A. Brown, Esq., in support of the joint motion, and the affidavit of Waren E. King, Esq., in opposition thereto, finds for the reasons stated in the joint motion of defendants that this action

should be transferred to said district for the convenience of the parties and witnesses and in the interest of justice.

[fol. 169] It Is Therefore Ordered that this action be and it is hereby forthwith transferred to the United States District Court for the District of Utah, Central Division, sitting at Salt Lake City, Utah.

It Is Further Ordered that the Clerk of this Court be and he is hereby instructed forthwith to transmit to the Clerk of the United States District Court for the District of Utah certified copies of all the papers filed with him in this proceeding, including a copy of his docket thereon and this Order of Transfer.

Enter .....
Chief Judge, United States District Court for the Northern District of Illinois.

Dated: June 6, 1958

[File endorsement omitted]

[fol. 170]

In United States Court of Appeals
For the Seventh Circuit

Before

Hon. F. Ryan Duffy, Chief Judge
Hon. .....
Hon. .....

No. 12356

[Title omitted]

Rule to Show Cause—June 30, 1958

It is alleged and not controverted in this record that petitioners were the owners respectively of 900 shares and 1000 shares of capital stock of Utah Oil Refining Company; that Standard Oil Company and Standard Oil Foundation, Inc., owned respectively 1,800,640 shares and 71,380 shares;

and that various individuals and trusts owned 140,519 shares of said stock of Utah Oil Refining Company.

Petitioners, as plaintiffs, brought an action in a representative capacity upon behalf of themselves and other minority stockholders, claiming violations of fiduciary relations by dominant and controlling officers and stockholders of respondents, in the sale of the assets of the Utah Oil Refining Company to a corporation owned and controlled by Standard Oil Company and Standard Oil Foundation, Inc.

[fol. 171] On February 12, 1958, petitioners, as plaintiffs, filed their complaint in the United States Court, Northern District of Illinois, Eastern Division. Defendants filed answer and motions to dismiss. On March 11, 1958, defendants filed a joint motion to transfer the suit to the United States District Court for the District of Utah, Central Division. Affidavits favoring and opposing said motion were filed. On June 6, 1958, without hearing oral arguments and without filing a written opinion, an order was entered by the Honorable Philip L. Sullivan transferring the cause to the United States District Court for the District of Utah, Central Division.

Claiming said order of transfer was not for the convenience of the parties or witnesses, and that said suit could not have been brought in the United States District Court for the District of Utah, Central Division, the plaintiffs, in said suit as petitioners herein, filed a petition for a writ of mandamus.

It Is Ordered, a rule issue requiring the Honorable Philip L. Sullivan, United States District Judge, Northern District of Illinois, Eastern Division, to show cause why a writ of mandamus should not issue as demanded in said petition; that said writ be returnable to this Court within thirty (30) days from the date of this order.

[fol. 172] [File endorsement omitted]

[fol. 173]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[Title omitted]

ANSWER OF RESPONDENT TO PETITION FOR WRIT OF MANDAMUS —Filed July 25, 1958

Pursuant to the Rule To Show Cause of this Court issued June 30, 1958, I hereby respectfully submit my answer to the petition of Otto Behimer and John A. Roberts for a writ of mandamus. Petitioners, one of whom is a resident of Illinois and the other of New York, complain of my order transferring to the Federal Court in Salt Lake City a class action which they had filed in the Northern District of Illinois. Petitioners' case, brought by them in a representative capacity, involves the propriety under Utah law [fol. 174] of the sale in 1956 by a Utah corporation of its assets. These assets were located in Utah and seven other far Western States. The class for whom petitioners assume to act consists of 920 stockholders of this Utah corporation, of which number 575 reside in Utah and 134 in California, Washington and Idaho.

1. Petitioners state that defendants, Standard Oil Company, an Indiana corporation (Standard) and Standard Oil Foundation, Inc., an Indiana charitable corporation (Foundation), were majority stockholders of Utah Oil Refining Company, a Utah corporation (Utoco). Petitioners charge that Standard and the Foundation, together with fifty-two other stockholders of Utoco, acted in derogation of the rights of the remaining stockholders by using their majority control to permit a subsidiary of the defendants to acquire 100% control of the assets of Utoco at a price below the fair market value thereof. The pleadings show that a proposal for this sale had been submitted to all the stockholders of Utoco, to be voted on at a special meeting

to be held in Salt Lake City on July 11, 1956. The proposal stated that the sale would not take place unless it were approved both by the affirmative vote of Standard and of the holders of more than 50% of the outstanding stock of Utoco other than Standard and the Foundation. The pro- [fol. 175] posal contemplated that, upon such approval, Utoco would sell its assets to Standard's subsidiary, would receive in exchange therefor Standard stock to be distributed to Utoco stockholders on a one for two basis, and would then dissolve. At this stockholders' meeting of July 11, 1956, approval was given to this proposal not only by Standard and the Foundation (who between them held 77.6% of the Utoco stock), but as well by the affirmative vote of the holders of 82.5% of all other outstanding stock, excluding that held by Standard and the Foundation. This latter figure would include not only the 140,519 shares held by the fifty-two stockholders whom petitioners call "Controlled Stockholders" in their complaint, but additionally the holders of 116,341 shares (out of a total of 170,577 shares) who are allegedly members of the class for whom petitioners assume to act, and whom they call the "Minority Stockholders." In other words, over 68% of the stock held by such Minority Stockholders was voted to approve that which petitioners seek to condemn on their behalf.

2. Petitioners' action was filed on February 12, 1958 in the United States District Court for the Northern District of Illinois, Eastern Division, and was numbered 58 C 238. Petitioners did not charge defendants with misrepresentation or concealment; their case, which is to be measured by [fol. 176] the yardstick of Utah law since this is a diversity case, charges that the defendants and the Controlled Stockholders improperly used their majority control in approving the sale at a price which was inadequate, and that the defendants dominated the officers and directors of Utoco in this regard. On March 10, 1958, each of the defendants filed its answer denying their alleged control over the fifty-two stockholders and their alleged dominance of the Utoco officers and directors. As part of their answer, defendants also moved to dismiss petitioners' complaint insofar as it purported to allege a class action.

3. On March 11, 1958, the defendants brought on before me their joint motion to transfer the action to the United States District Court for the District of Utah, Central Division. At this time, I approved the procedure which counsel for the parties had worked out between themselves, and accordingly accepted their time table for the filing of their briefs and affidavits upon the completion of which, petitioners not asking for oral argument and defendants having waived such, the motion was to be taken under advisement. A copy of my order of March 11, 1958, since it is not included in petitioners' record, is attached to my answer and marked Respondent's Exhibit 1. Defendants filed the affidavit of one Grant A. Brown, an attorney in Salt Lake City, Utah, who had been General Counsel for Utoco, and [fol. 177] petitioners filed in answer the affidavit of their attorney, Warren E. King, which did not in any way controvert the statements in the Brown affidavit.

4. By inspection of the Brown affidavit, it became apparent that the class of Minority Stockholders, of whom petitioners allege themselves to be the representatives, consists of 918 persons (in addition to petitioners) of whom 575 reside in Utah and 134 more live in California, Washington and Idaho. These 709 persons hold 119,530 shares of stock, or approximately 70% of the total of all shares held by the class, which is 170,577 shares.

5. Because of the responsibility with which any District Court is faced when an alleged class action is brought before it, not only to adjudicate as between the parties but as well to safeguard the interests of all the members of the class, the factor of their residence was one which greatly impressed me. My feeling of responsibility was heightened by the complete omission on the part of petitioners to allege that they had been authorized to bring suit or to make any showing that they would fairly insure the adequate representation of all. In consequence, I felt the remark of the Supreme Court to be particularly apt that "In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn

of it by report only." *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. at p. 509.

[fol. 178] 6. For reasons which I mention shortly, I came to the conclusion that, if I had the power to do so, I would be guilty of an abuse of the discretion vested in me by Section 1404(a) of the Judicial Code if I refused to transfer this action to Salt Lake City. But I was at first bothered by the circumstance that I might lack the power to transfer because the United States District Court for the District of Utah, Central Division, was not one where initially this case "might have been brought." I had noted the defendants' assurance in their joint transfer motion that "in the event of the transfer of this suit as requested, their personal appearance will be entered in, and they will waive any legal privilege they may have as to the venue of," the transferee court. I had appreciated the fact that the Court of Appeals for the First, Second, Third and Fifth Circuits* had ruled that District Courts had such power under such an assurance. The action of this Court, however, in *General Casualty Company* v. *Grubb*, on March 5, 1958, reported in 253 F. 2d 51, removed all doubt on this score, and my power to transfer being affirmed as a legal proposition, I regarded my duty to transfer under the facts of the instant case as [fol. 179] obvious. I might add that subsequent to the date of my transfer order of June 6, 1958, this Court has reaffirmed its decision in Judge Grubb's case by its opinion in the petition of John F. Blaski involving Judge Hoffman (No. 12285 in this Court, decided July 1, 1958), and the Supreme Court has denied certiorari in Judge Grubb's case on June 9, 1958. *General Casualty Company* v. *Grubb*, 356 U.S. ——.

7. I assume therefore that this Court, in issuing its Rule to Show Cause, was not concerned with the fact of my

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* That is, *in re Josephson*, 218 F.2d 174 (First Circuit); *Anthony* v. *Kaufman*, 193 F.2d 85 (Second Circuit); *Paramount Pictures* v. *Rodney*, 186 F.2d 111 (Third Circuit); and *Ex parte Blaski*, 245 F.2d 737 (Fifth Circuit).

power to transfer. Likewise, I assume that petitioners' charge of prematurity does not much trouble the Court. Petitioners state that I should not have acted on the transfer motion before the defendants' motions to dismiss had been disposed of, on the ground that if the motions are well founded in law there would be no justiciable controversy left. But petitioners seem to overlook the fact, which I cannot overlook, that defendants' motions to dismiss are not addressed to the suit in its entirety but only to its class action aspect. Therefore, even if I had considered and upheld these motions, petitioners' own case would remain, which the motions did not challenge. There would still be this controversy left, and had I thrown out the entire case, I would have been subject to reversal under the ruling of this Court in *Weeks* v. *Bareco Oil Co.*, 125 F.2d 84, at p. 93. Additionally and apart from this, I be-[fol. 180] lieve the forum best suited to consider defendants' attack upon the adequacy of petitioners' representation of the alleged class would be the forum at Salt Lake City, Utah, in which State the majority of the class reside, and to whose judge the members could much more readily make known their views. That Court should be allowed the freedom of ruling on that aspect of the case, unhindered by any action in this regard by the transferring court.

8. If petitioners' attack on my power to transfer and the prematurity of my order be regarded as having no merit, then only petitioners' third and last assertion is left: viz., that I was guilty of an abuse of discretion in ordering the transfer of the action. It is my firm conviction, however, that I would have abused my discretion if I had not ordered the transfer, for I felt, in view of the reasons advanced in defendants' transfer motion, that this action should be transferred as requested. I so announced this to counsel from the bench, and I made this finding in my order of transfer. In view of this, and because the facts so plainly warranted the transfer, I did not think a written opinion to be necessary.

9. In sum, the reasons on which I felt a transfer was compelled were:

[fol. 181] A. The majority of the class for whom petitioners assume to act reside in Utah or contiguous States. In my mind, this circumstance outweighed petitioners' choice of forum. The original forum (Chicago, Illinois), considered both in relation to the residence of the two petitioners (Illinois and New York) and the residence of the majority of the class, seemed, in the words of the Supreme Court in the *Koster* case, much less appropriate than the transferee forum in "relation to the whole group of members and stockholders whom plaintiff volunteers to represent." 330 U.S. at p. 526.

B. Petitioners have asserted in their complaint, and defendants have denied, that a group of stockholders (not members of the alleged class), some fifty-two in number, were controlled by the defendants. Likewise placed in issue by the pleadings is the question whether the officers and directors of the corporation, sixteen in number, were dominated by defendants. All of such stockholders (with two exceptions) and all of these officers and directors (one is now dead) live in Utah. Defendants stated that the testimony of these persons will be necessarily involved. I think they are right because I find it to be inconceivable, in view of the issues as to dominance and control, that petitioners [fol. 182] will not have to call at least some of these persons as witnesses in order to sustain their burden of proof arising from these controverted issues. The residence of these witnesses in Utah would, of course, make the Federal Court at Salt Lake City much the more convenient forum, particularly considering their amenability to subpoena in Utah. Each of their names and addresses appear in the affidavit supporting defendants' transfer motion.

C. The Brown affidavit submitted by defendants describes in some detail the books and records of Utoco, all of which are located in Salt Lake City in the custody of one Stoker and one Earnshaw, two officers of the purchasing corporation. These books and records, including such items as operating and financial statements and ledgers

showing capital investments and property accounts, would be better examined and utilized in the Utah forum where witnesses could be subpoenaed to testify about them and where their inspection could be coordinated with a concurrent view of the premises, should the District Judge in Utah deem this advisable.

D. The corporate assets themselves, which petitioners claim were sold for an inadequate price, are located in the eight Western States of Arizona, Colorado, Idaho, Nevada, Oregon, Utah, Washington and Wyoming. I believe, in the context of the issues of this case, that the court trying [fol. 183] this case might regard a view of the premises to be proper. If this be so, certainly Chicago, as opposed to Salt Lake City, would be inconvenient.

E. The purchasing corporation has its offices in Salt Lake City. It would be amenable to suit, and could readily be made an additional party defendant to the instant action were such to be transferred to Salt Lake City. Some members of petitioners' alleged class might well prefer that this be done.

F. The business of the purchasing corporation would be disrupted by the absence of its officers and directors to attend pre-trial and trial proceedings of this suit in Chicago.

G. In this diversity case, the substantive law by which the rights and obligations of the parties are to be governed is that of Utah. Transfer there would eliminate problems of conflict of laws and facilitate the disposition of the case by a court more at home with Utah law than the court in Chicago.

H. Petitioners have not disputed the circumstance that the calendar of the Northern District of Illinois is much more congested than that of the District of Utah. Petitioners would be able to secure trial much more rapidly there, and in a forum which has a much closer relation to the litigation than Chicago.

[fol. 184] For the above reasons, I found that the action should be transferred to the United States District Court

for the District of Utah, Central Division, for the convenience of the parties and witnesses and in the interest of justice. Indeed, under the circumstances, I believe I could not properly have refused such transfer.

Dated, Chicago, Illinois, this 21st day of July, 1958.

Respectfully submitted,

Philip L. Sullivan, Chief Judge of the United States District Court for the Northern District of Illinois, Respondent.

[fol. 185]

RESPONDENT'S EXHIBIT 1 TO ANSWER

UNITED STATES DISTRICT COURT
Office of the Clerk
United States Court House
Chicago 4

DATE: Mar. 14, 1958

Re: Otto Behimer, et al.

Vs. Standard Oil Co., et al.

Case No. 58 C 238

You are hereby notified that Judge Sullivan entered the following order of March 11, 1958:

Defts. given until Mar. 27, 1958 to file affidavits and brief in support of their joint motion to transfer case to Salt Lake City. Pltffs. given until April 11, 1958 to file their brief and Defts. given until April 21, 1958 to file their Reply brief and said motion is taken under advisement.

ROY H. JOHNSON, Clerk

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[fol. 186]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12356 SEPTEMBER TERM, 1958 SEPTEMBER SESSION, 1958.

OTTO BEHIMER and JOHN A. ROBERTS, Petitioners,

v.

HONORABLE PHILIP L. SULLIVAN, Chief Judge of the United States District Court for the Northern District of Illinois, Respondent.

Petition for Writ of Mandamus

Before DUFFY, *Chief Judge*, and MAJOR and SCHNACKENBERG, *Circuit Judges*.

OPINION—November 26, 1958

SCHNACKENBERG, *Circuit Judge*. Petitioners for a writ of mandamus, Otto Behimer and John A. Roberts, citizens of Illinois and New York, respectively, filed their complaint for damages in the District Court for the Northern District of Illinois, Eastern Division, against Standard Oil Company and Standard Oil Foundation, Inc., Indiana corporations, on behalf of themselves and other minority stockholders of Utah Oil Refining Co. (herein referred to as UTOCO), a Utah corporation.

The allegations of the complaint, in substance, are that defendants owned a large majority of the stock of UTOCO, [fol. 187] approximately 77.6% of the total of 1,391,116 shares of the outstanding stock; that plaintiffs owned 1,900 shares; that 140,519 shares were owned by (to use petitioners' words) "controlled stockholders"; that the officers and directors of UTOCO were under the control and domination of defendants; that, pursuant to an agreement between defendants and UTOCO, a Delaware corporation, wholly owned by Standard Oil Company, was formed; that the only asset of the Delaware corporation was stock of

Standard Oil Company; that the Delaware corporation purchased all of the assets of UTOCO and paid therefor with Standard Oil stock so that the only asset of UTOCO became the Standard Oil stock; that this stock, in turn, was distributed to UTOCO stockholders at the rate of one share of Standard for each two shares of UTOCO; and that, after the distribution, UTOCO caused itself to be dissolved.

The complaint further alleges that the "oppressive action" of defendants and the "controlled stockholders" resulted in defendants' acquiring 100% of UTOCO at a price far below the fair value thereof; that UTOCO stockholders were compelled to become stockholders of Standard Oil Company, and that UTOCO stockholders suffered monetary damages to the extent of the difference between the market value of one-half share of Standard Oil stock and the fair value of one share of their UTOCO stock.

Defendants filed their respective answers and motions to dismiss the complaint, and the following day, before any disposition was made of the motions to dismiss, filed their joint motion to transfer the cause to the United States District Court for the District of Utah. Pursuant to order of court, defendants filed their affidavit and brief in support of their motion, petitioners filed their affidavit and brief in opposition thereto, and defendants filed a reply brief.

The district court granted the motion for transfer.

Petitioners, in their affidavit and brief before the district court, allege (without denial by defendants) that statutory venue does not exist in the United States District Court for the District of Utah, neither defendant does business [fol 188] there, resides there, or is amenable to service of process there.[1]

Petitioners contend in this court, *inter alia*, that respondent lacked power to transfer the action to the District of

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[1] Defendants have not challenged the statutory venue, 28 U.S.C.A. § 1391(a), of the District Court for the Northern District of Illinois, Eastern Division. Cf. *Olberding* v. *Illinois Central R. Co.*, 346 U.S. 338, 340.

Utah. In their petition in this court they say that they could not have brought their suit in the District of Utah.

Respondent's answer to the petition for a writ of mandamus sets forth in detail the facts in the case which he believes justified his order of transfer. He asserts that he assumed "that this court, in issuing its Rule to Show Cause, was not concerned with the fact of my power to transfer."

In his brief, respondent asserts that he did have power to make the transfer pursuant to 28 U.S.C.A. § 1404 (a). He states that, in their joint motion to transfer, defendants formally assured the court that their personal appearances would be entered in, and they would waive any legal privilege they might have as to the venue of, the United States District Court for the District of Utah, Central Division.

On the facts before us in this record, we are required to decide whether respondent had power to make the transfer. We hold that he did not have that power. Whether or not he properly exercised his discretion in the mistaken belief that he did have such power, it will be unnecessary for us to decide.

The controlling language is contained in 28 U.S.C.A. § 1404 (a):

> "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

When Congress provided for the transfer of a case to a district "where it might have been brought," it meant the district where plaintiff had a recognized right to bring [fol. 189] his case under the Venue Act[2] and that this right was unqualified and absolute, not depending upon consent of the defendant, evidenced by waiver, entry of appearance, or otherwise. If when a suit is commenced, plaintiff has a right to sue in that district, independently of the wishes of defendant, it is a district "where it might have been brought." If he does not have that right, independently of the wishes of defendant, it is not a district "where it might

[2] 28 U.S.C.A. § 1391.

have been brought," and it is immaterial that the defendant subsequently acquiesces. The test is, did the plaintiff have an independent right to commence suit in the district to which it is sought to make transfer? If so, it is a district "where it might have been brought"; otherwise, it is not such a district. We recognize, of course, that venue may be waived under proper circumstances, but we do not think it can be waived in a forum in which an action has not and could not have been properly brought by the opposing party. To hold otherwise is to permit a defendant to select a forum not available to a plaintiff as a matter of right, and over plaintiff's objection. *Blaski* v. *Hoffman, Judge*, No. 12285 in this court, October 16, 1958, ... F. 2d .....

A writ of mandamus will issue directed to respondent, commanding him to vacate the order entered by him in case numbered 58 C 238, entitled *Otto Behimer and John A. Roberts, plaintiffs*, v. *Standard Oil Company, and Standard Oil Foundation, Inc., Indiana corporations, defendants*, which order transferred said case to the United States District Court for the District of Utah, Central Division, and further commanding respondent to proceed to adjudicate and determine said case according to law.

ORDER MANDAMUS ISSUE.

[fol. 190]

IN UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12356

OTTO BEHIMER and JOHN A. ROBERTS, Petitioners,

vs.

HONORABLE PHILIP L. SULLIVAN, Chief Judge of the United States District Court for the Northern District of Illinois, Respondent.

Original Petition for Writ of Mandamus

This matter comes before the Court on the petition of Otto Behimer and John A. Roberts for a writ of mandamus, the response of respondent thereto, filed pursuant to a Rule

To Show Cause heretofore issued by this Court, and was argued by counsel.

JUDGMENT—November 26, 1958

On consideration whereof, it is ordered and adjudged by this Court that a writ of mandamus issue directed to respondent, commanding him to vacate the order entered by him in case numbered 58 C 238, entitled *Otto Behimer and John A. Roberts, plaintiffs*, v. *Standard Oil Company, and Standard Oil Foundation, Inc., Indiana corporations, defendants*, which order transferred said case to the United States District Court for the District of Utah, Central Division, and further commanding respondent to proceed to adjudicate and determine said case according to law, in accordance with the opinion of this Court filed this day.

[fol. 191]

IN UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before Hon. Elmer J. Schnackenberg, Circuit Judge.

[Title omitted]

STAY ORDER—December 8, 1958

On consideration of the petition of counsel for respondent,

It Is Ordered that the issuance of the writ of mandamus as ordered in the above entitled cause on November 26, 1958 be stayed for thirty (30) days, and if within such thirty (30) days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court certifying that certiorari petition, record and brief have been filed, the stay shall continue until final disposition by the Supreme Court.

[fol. 192] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 193]

SUPREME COURT OF THE UNITED STATES

No. 26, October Term, 1959

SULLIVAN, Chief Judge of the United States District Court for the Northern District of Illinois, Petitioner,

vs.

OTTO BEHIMER et al.

ORDER ALLOWING CERTIORARI—October 12, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is transferred to the summary calendar and set for argument immediately following No. 25.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.